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INTRODUCTION BY THE NATIONAL CLEARINGHOUSE

ON ELECTION ADMINISTRATION

Election Case Law is a quarterly series designed to report and summarize all recent State and Federal litigation relating to election matters. The series is cumulative throughout the calendar year such that each quarterly edition contains the information of previous quarters culminating in the fourth quarter's Annual Cumulative Summary.

It is important to note that neither the listings nor the synopses are intended to be definitive. Legal conclusions should be drawn only by qualified professionals on the basis of the particulars of the original decision. Those concerned with the general direction of election case law will nevertheless benefit and will be assisted by the topic index in the back of the volume.

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ELECTION CASE LAW

AN ANALYSIS OF RECENT SUPREME COURT, FEDERAL COURT, AND STATE COURT DECISIONS

PREPARED FOR
FEDERAL ELECTION COMMISSION

BY

AMERICAN LAW DIVISION OF THE CONGRESSIONAL RESEARCH
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JANUARY THROUGH DECEMBER 1980

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FOREWORD

The Election Case Law is a project sponsored by the Federal Election Commission and produced by the American Law Division of the Congressional Research Service of the Library of Congress. The Election Case Law contains analyses of various Supreme Court, Federal and State Court Cases and Commission opinions and orders involving election matters. A quarterly cumulative publication will be issued in the months of April, July, October, and January. The January issue will be the final cumulative edition of the year.

The principal purpose of the Election Case Law is to furnish in the form of a brief analysis the important court decisions in the election law field. Should more information be desired by the reader, it might be necessary to contact the court involved to get a complete version of the decision regarding any of the analyses of the cases. In analyzing decisions in the publication, the objectives are to include as many decisions and provide as much detail about those decisions as time and space permit.

Each issue of the Election Case Law encompasses five sections, one relating to major Supreme Court decisions, another to major federal court decisions, another to major state court decisions, another to major Commission opinions and the final section to major state attorney general opinions, all of which concern significant election matters. This report does not purport to cover all election decisions. The purpose of this report is to analyze the significant decisions in the election law field that may be of interest to large cross sections of readers rather than to certain readers in a certain locale or with certain interest groups.

Preparation of the Election Case Law is the responsibility of the American Law Division of the Congressional Research Service, Library of Congress under contract with the Federal Election Commission and under the Supervision of Gary L. Greenhalgh, Director of the Clearing House on Election Administration. Thomas M. Durbin, Jay R. Shampansky and Michael V. Seitzinger are the Editors. M. Ann Wolfe is the Managing Editor. La Vonne M. Grabiak is the Assistant Editor. Daphine Lee is the Editorial Assistant. Gilbert Gude, Director of the Congressional Research Service, Joseph E. Ross, Chief of the American Law Division, and Charles Doyle, Assistant Chief, serve as Supervising Editors.

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28. Williams v. Brown, Doc. No. 78-357, ruling below CA 5. Judgment vacated and remanded 4/22/80.

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15. McDaniel v. Sanchez, Doc. No. 80-180, ruling below CA 5 (615 F2d 1023). (See summary in Fed. Ct. Cases sub nom. Sanchez v. McDaniel). Certiorari granted 10/14/80.

    County reapportionment - Preclearance under sec. 5 of Voting Rights Act.

16. Meads v. Carter, Doc. No. 80-125, ruling below USDC Dist. Col. Appeal dismissed 10/6/80.

    Minor party access to ballot - presidential campaign fund distribution.

17. Miller v. Calhoun, Doc. No. 80-832, ruling below CA 6.

    Muncipal corporations - Annexations of area with 100 or fewer residents without referendum - Equal protection - Voting Rights Act.

18. National Broadcasting Company, Inc. v. FCC, Doc. No. 80-214, ruling below CA DC (48 LW 2622) (See summary Fed. Ct. Cases sub nom. CBS Inc. v. FCC) Certiorari granted 11/3/80.

    Communications - Access to broadcast facilities by candidates for federal office - §312(a)(7) of Communications Act of 1934 - First Amendment.

19. National Chamber Alliance For Politics v. Federal Election Commission, Doc. No. 80-349, ruling below CA DC. Certiorari denied 11/3/80. (See summary in Fed. Ct. Cases sub nom. Martin Tractor Company v. FEC).

    Federal Election Campaign Act - Judicial review of constitutionality of certain sections - Ripeness.

20. Russell v. Kansas, Doc. No. 80-424, ruling below Kan. Sup. Ct. (227 Kan. 897, 610 P.2d 1122). Certiorari denied 11/10/80.

    Attorneys - Disciplinary proceeding - Public censure for publishing political ad in campaign unrelated to law practice.

21. Sharrow v. Holtzman, Doc. No. 79-2005, ruling below CA 2. Certiorari denied 10/6/80.

    United States - Apportionment of House of Representatives - Sec. 2 of Fourteenth Amendment.

22. Stroom v. Civilitti, Doc. No. 80-570, ruling below USDC DC. Certiorari denied 10/20/80.

    Exclusion of minor independent candidate for President from ballot.

23. Vara v. City of Houston, Doc. No. 79-1939, ruling below Tex. Ct. Civ. App. 14th Sup. Jud. Dist. (583 S.W.2d 935). Appeal Dismissed 10/6/80.

    Municipal corporations - Disannexation procedure - Equal protection.

24. Wilson v. Firestone, Doc. No. 80-457, ruling below CA 5. Certiorari denied 11/10/80.

    Ballot access for independent candidates - Signature requirements - Filing deadline - Equal protection.

Apportionment and Redistricting - At-Large Elections

City of Mobile, Alabama v. Bolden, 446 U.S. 55, 48 U.S.L.W. 4436, Doc. No. 77-1844, decided 4/22/80.

A divided Supreme Court reduced the power of federal courts to rewrite state and local election laws in voting rights cases by overturning a court order which restructured the city government of Mobile, Alabama from an at-large electoral system to single-member districts electoral systems due largely to the fact that no black had been elected to city office.

Mobile, Alabama is governed by a Commission consisting of three members elected by the voters of the city at-large. A suit was brought by black citizens of Mobile in the Federal District Court for the Southern District of Alabama; the complaint alleged that the practice of electing the commissioners at-large unfairly diluted the black voting strength in violation of (1) section 2 of the Voting Rights Act of 1965, (2) the fourteenth amendment, and (3) the fifteenth amendment. The district court found that the constitutional rights of the black citizens had been violated and ordered that the commission system be abandoned and replaced by a municipal government consisting of a mayor and a city council with members elected from single-member districts. 423 F. Supp. 384. The federal court of appeals affirmed noting that such at-large elections discriminated against blacks in violation of the fourteenth and fifteenth amendments and that the district court remedy was appropriate. Bolden v. City of Mobile, 571 F. 2d 238 (5th Cir. 1978).

In an opinion delivered by Justice Stewart and joined by Chief Justice Burger, and Justices Powell and Rehnquist, the Supreme Court reversed the lower courts and concluded that Mobiles system of electing commissioners at-large did not violate the voting rights of blacks in contravention of the fifteenth amendment. A violation of the fifteenth amendment requires racially discriminating motivation. The fifteenth amendment does not confer on black candidates the right to be elected but prohibits any purposely discriminating denial or abridgment of the right to vote on account of race, color, or previous condition of servitude. Since black citizens in Mobile register and vote without hindrance, the fifteenth amendment was not violated.

The at-large electoral system that was used by the city of Mobile was found not to be in violation of the equal protection clause of the fourteenth amendment since there was no purposeful discrimination. The equal protection clause does not require proportional representation as an imperative of political organization. The equal protection clause protects the right to vote in elections on an equal basis with other qualified voters but it does not protect any "political group" from electoral defeat. Also, there was no violation of the "one-person, one-vote" principle since the electoral system in Mobile is a unitary electoral district and since nobody's vote has been diluted. cf. Reynolds v. Sims, 377 U.S. 533 (1964).

Justice Blackmun and Stevens filed separate opinions concurring in the judgment. And Justice Brennan, White, and Marshall filed dissenting opinions.

Candidates - Ballots, Access

Illinois State Board of Elections v. Socialist Workers Party et al., 440 U.S. 173, Doc. No. 77-1248, decided 2/22/79.

In this case the Supreme Court affirmed the ruling of the court of appeals and the district court, which held that the provisions of the Illinois Election Code governing signature requirements for ballot access for new parties and independent candidates violated the equal protection clause of the fourteenth amendment.

The Chicago Board of Election Commissioners, purporting to follow the statutory requirements of the Illinois Election Code for a special mayoral election, set the filing deadline of 64 days prior to the election and the signature requirements for independent candidates and new parties as not less than 5% of the number of voters who voted at the next preceding general election for the same office. These decisions resulted in a higher number signature requirement for city elective offices than for state elective offices. Upon review of the complaint, the district court issued an order reflecting an agreement by the Chicago Board and Socialist Workers Party to lower the 5% statutory signature requirement to 20,000 signatures and to extend the filing deadline by 14 days. The district court stated that the signatures required could not exceed 25,000, since Illinois statutes provide that petitions containing 25,000 signatures would be sufficient to obtain ballot placing for state-wide races. No rational reason could be found as to why a 25,000 signature petition could satisfy the legitimate state interests for restricting ballot access in state elections and not do the same in a lesser unit. The court of appeals affirmed when the Illinois State Board of Elections appealed the decision.

In the Supreme Court memorandum it was noted that in a previous case where the Illinois 5% signature requirement has been upheld (Jackson v. Ogilvie, 325 F. Supp. 864 (ND Ill.) summarily aff'd, 403 U.S. 925 (1971)), neither the circumstances of a special election nor the disparity between state and city signature requirements was addressed. The Court determined that, at variance with Jackson, this case's equal protection claim rested on the "discrimination between those independent candidates and new parties seeking access to the ballot in state-wide elections and those similarly situated candidates and parties seeking access in the city elections." The Court reiterated a statement made in Mandel v. Bradley, 432 U.S. 173, 176 (1977), that the "precedential effect of a summary affirmance can extend no farther than 'the precise issues presented and necessarily decided by those actions.' A summary disposition affirms only the judgment of the court below."

The Court then examined three aspects of the signature requirements in determining whether the signature requirements violated the equal protection clause: 1) the character of the classification in question, 2) the importance of the individual interests at stake, and 3) the state interests asserted in support of the classification. The Court determined that, though the existing code, which incorporates a geographic classification (distinguishing state candidates, political parties, and the voters supporting each, from city candidates,

parties and voters), had been rendered unreasonable due to previous Court decisions declaring parts of the code unconstitutional (Moore v. Ogilvie, 394 U.S. 814 (1969)), no reasons had been suggested that would justify the continued enforcement of the remaining provisions. In dealing with the individual interests at stake, the Court held that "[r]estrictions on access to the ballot burden two distinct and fundamental rights, 'the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively.'" The Court noted that, though the states have a legitimate interest in regulating the number of candidates on the ballot, they may not choose means that unnecessarily restrict constitutionally protected liberty. The Court added:

> States' interest in screening out frivolous candidates must be considered in light of the significant role that third parties have played in the political development of the Nation. Abolitionists, Progressives, Populists have undeniably had influence, if not always electoral success. As the records of such parties demonstrate, an election campaign is a means of disseminating ideas as well as attaining political office.... Overbroad restrictions on ballot access jeopardize this form of political expression.

Political Parties - Freedom of Association - Composition of State Committee

Marchioro et al. v. Chaney et al., 442 U.S. 191, Doc. No. 78-647, decided 6/4/79.

The powers of the Washington Democratic State Committee derive from a state statute, providing that each major political party must have a state committee consisting of two persons from each county in the state, and from the Charter of the Democratic Party of Washington, giving the state committee authority to organize and administer the party's administrative apparatus, to raise and distribute funds to candidates, to conduct workshops, to instruct candidates on effective campaign procedures and organization, and to further the party's objectives of influencing policy and electing its adherents to public office. The State Democratic Convention adopted a charter amendment directing that the state committee include members other than those specified by state statute, and in compliance with this the amendment provided that, in addition to the two delegates from each of the state's thirty-nine counties, there should be one representative elected from each of the state's forty-nine legislative districts. These new legislative district representatives were elected to serve on the state committee. At a later meeting of the state committee, a motion to seat these newly elected representatives was ruled out of order in reliance on the statutory definition of the composition of the committee. Members and officers of the State Democratic Party brought suit alleging that the state statute violates the rights of members of a political party to freedom of association protected by the first amendment of the United States Constitution.

The Court held that the state statute does not violate plaintiffs' first amendment rights. The requirement that political parties form central or county committees composed of specified representatives from each district is common in state laws. The state's interest in insuring that the process of selecting and electing candidates for office is conducted in a fair and orderly manner is legitimate. The activities to which plaintiffs object are not required by statute to be performed by the committee; instead, the source of the committee's authority is the charter adopted by the Democratic Party. Thus, there can be no complaint that the party's right to govern itself has been substantially burdened by statute, since the source of the complaint is the party's own decision to confer critical authority on the state committee.

Political Parties - Patronage Positions

Branti v. Finkel, 445 U.S. 507, 48 U.S.L.W. 4331, Doc. No. 78-1654, decided 3/31/80.

Two assistant public defenders were about to be discharged because of Republican Party membership. They contended that the dismissal would violate their first and fourteenth amendment freedom of speech and association rights. The district court permanently enjoined the petitioner public defender (a member of the Democratic Party) from terminating respondents' employment on those grounds. 457 F. Supp. 1284 (SDNY 1978). The lower court, guided by Elrod v. Burns, 427 U.S. 347 (1976), held that this type of dismissal would be permitted only if assistant public defenders could be defined as policymaking, confidential employees. The district court decided that, although respondents had broad responsibility for particular cases that were assigned to them, they had 'very limited, if any, responsibility' for the overall operation of the public defender's office. The court of appeals affirmed in an unpublished memorandum opinion. 598 F.2d 609 (2d Cir. 1979) (table).

The Court affirmed the court of appeals. The Court disagreed with petitioner's contention that there was a requirement under Elrod which prohibited only those dismissals which resulted from an employee's failure to capitulate to political coercion. Petitioner argued that, so long as an employee is not asked to change his political affiliation or to contribute to or work for the party's candidates, he may be dismissed with impunity, even though he would not have been dismissed if he had had the proper political sponsorship. The Court held that for respondents to prevail in this action it was sufficient that they prove that they were discharged solely for the reason that they were not affiliated with or sponsored by the Democratic Party.

The Court stated that "the ultimate inquiry is not whether the label 'policymaker' or 'confidential' fits a particular position; rather, the question is whether the hiring authority can demonstrate that party affiliation is an appropriate requirement for the effective performance of the public office involved." The Court agreed with the lower courts that the continued employment of an

assistant public defender cannot properly be conditioned upon his or her allegiance to the political party in control of the county government because the primary, if not the only, responsibility of an assistant public defender is to represent individual citizens in controversy with the state; whatever policy-making occurs in the public defender's office must relate to the needs of individual clients and not to any partisan political interests.

Dissenting opinions were filed by Justices Stewart, Powell and Rehnquist. Justice Stewart believed that Elrod does not control the present case because the relationship between the public defender and his assistants is of a confidential nature necessitating mutual confidence and trust.

Justices Powell and Rehnquist joined in a dissent which rejected both Branti and Elrod. They stated that the Court's conclusion "largely ignores the substantial governmental interests served by partonage." They said that the "standard articulated by the Court is framed in vague and sweeping language certain to create vast uncertainty. Elected and appointed officials at all levels who now receive guidance from civil service laws, no longer will know when political affiliation is an appropriate consideration in filling a position."

Voting Rights Act - Section 5

City of Rome v. United States, 446 U.S. 156, 48 U.S.L.W. 4463, Doc. No. 78-1840, decided 4/22/80.

After the coverage date of the Voting Rights Act of 1965, the Georgia General Assembly made several changes in Rome's election procedures. It enacted a majority vote requirement for City Commission and Board of Education general and primary elections and provided for the conduct and timing of runoff elections; reduced the number of wards from nine to three; provided that the Commission was to consist of one commissioner from one of three numbered posts in each of three wards; increased the size of the Board of Education from five to six; provided that the Board of Education was to consist of one member from one of two numbered posts in each of three wards and that each candidate had to be resident of the ward in which he ran; instituted staggered terms in the Commission and Board of Education; eased restrictions on voter qualifications; and transferred voter registration responsibility to the county. Further, sixty annexations were effected by either state law or by local ordinance.

Litigation ensued as a result of Rome's submitting an annexation to the Attorney General for approval pursuant to section 5 of the Voting Rights Act, 42 U.S.C. 1973c. This section provides essentially that, whenever a covered state or political subdivision covered by the Act seeks to make a change in its voting laws, it must submit these proposed changes for approval to the U.S. Attorney General or to the United State District Court for the District of Columbia.

As a result of the investigation of this submitted annexation, the Attorney General discovered that the other annexations and voting changes had not been submitted for preclearance either to him or to the United States District Court

for the District of Columbia. Rome then submitted all but one of these changes to the Attorney General for preclearance. During the administrative hearings, the Attorney General precleared the following: 47 of the 60 annexations; the reduction in wards from nine to three; the increase in size of the Board of Education from five to six; and the easing of restrictions on voter qualifications. The Attorney General did, however, object to several other changes, and plaintiffs filed suit. Plaintiffs contended that 1) Rome is entitled to "bail-out" from coverage pursuant to section 4 of the Act, 2) that some or all of the objected-to changes have already been administratively precleared, 3) that section 5 is unconstitutional, and 4) that the disputed changes have neither the purpose nor the effect of denying or abridging the right to vote on the basis of race or color.

The Court ruled in favor of the United States. The Court held that Rome could not use section 4's bail-out procedure. Application of this section depends on whether the city is either a "State with respect to which the determinations have been made "under section 4(b) or "a political subdivision with respect to which such determinations have been made as a separate unit." Because section 4(b)'s coverage formula has never been applied to the city, the city does not fall within the definition of either term. Thus, a bail-out action to exempt the city must be filed by the state. In response to the city's argument that its electoral changes were precleared because of the Attorney General's tardy action, the Court stated that the sixty-day period within which the Attorney General must object to the proposed changes begins again when the submitting jurisdiction supplements its initial submission. Thus, the Attorney General's response in this situation was timely, and the changes were not precleared because of his allegedly tardy action.

City of Rome raised five issues of law to support its contention that the Voting Rights Act may not be applied to the electoral changes and annexations disapproved by the Attorney General. First, Rome argued that the changes should have been precleared because they had only a discriminatory effect and not a discriminatory purpose. Section 5 of the Act states that the Attorney General may clear a practice only if it "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color" (emphasis added). According to the Court, Rome's electoral changes could not be precleared because Congress plainly intended that a voting practice not be precleared unless both discriminating purpose and effect are absent.

The second issue of law raised by Rome was that the Voting Rights Act exceeds Congress's power to enforce the fifteenth amendment. To this argument the Court responded that under section 2 of the Amendment Congress may prohibit practices that do not violate section 1 of the Amendment so long as the prohibitions attacking racial discrimination in voting are appropriate. The Court found that in this situation the Voting Rights Act's ban on discriminatory electoral changes is an appropriate method of promoting the fifteenth amendment's purposes. It was rational to conclude that it was proper to prohibit changes that have a discriminatory impact in jurisdictions with a history of intentional racial discrimination.

The third issue of law concerned whether the Act violated principles of federalism articulated in National League of Cities v. Usery, 426 U.S. 833 (1976). This case held that federal legislation regulation minimum wages and hours could not constitutionally be extended to employees of state and local governments. The decision was based solely on our assessment of congressional power under the commerce clause. An extension of National League of Cities occured in Fitzpatrick v. Bitzer, 427 U.S. 445 (1976), in which it was held that Congress had the authority under the fourteenth amendment to bring the states as employers within Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sec. 2000 e et seq. The Court believed that Fitzpatrick stands for the proposition that principles of federalism that might be an obstacle to congressional authority are overridden by the power to enforce the Civil War Amendment by appropriate legislation. Thus, Congress had the authority to regulate state and local voting through the provisions of the Voting Rights Act.

The fourth issue of law concerned whether, even if the Act and its preclearance requirement were appropriate means of enforcing the fifteenth amendment in 1965, they had outlived their usefulness by 1975 when Congress extended the Act for seven years. The Court held here that the extension of the Act was a constitutional method of enforcing the fifteenth amendment in view of Congress's determination that at least another seven years of enforcement were necessary to counter the many past years of pervasive voting discrimination.

The fifth issue of law related to appellants' argument that, because no elections have been held in the city since 1974, their first, fifth, ninth, and tenth amendment rights as private citizens have been abridged. The Court found this argument to have no merit since, if the Attorney General refused to preclear the electoral changes, the city could have conducted elections under its prior electoral scheme. Thus, the city's failure to hold elections can be attributed only to its own officials and not to the Act.

The Court finally addressed the question of whether the 1966 electoral changes and the annexations disapproved by the Attorney General have a discriminatory effect. The Court held that the lower court did not clearly err in finding that the city failed to prove that the 1966 electoral changes would not dilute the effectiveness of the black vote in the city. Further, the Court found that the city failed to meet its burden of proving that the thirteen disapproved annexations did not dilute the black vote.

SECTION II - FEDERAL COURT CASES

Advertising and Solicitation - Bulk Third Class Mailing Rate

Greenberg v. Bolger, No. 80 Civ. 0340, (E.D. N.Y. June 20, 1980)

In this case plaintiffs were five "new" political parties and the National Unity Campaign for John Anderson, independent candidate for President of the United States. Plaintiffs were seeking an injunction to either invalidate a portion of the Postal Service Appropriation Act, 1980, Pub. L. No. 96-74 title II, 92 Stat. 562 (1979), as unconstitutional or alternatively, to direct defendants, officials of the United States Postal Service, to afford plaintiffs the special reduced rates for bulk third class mailings. These bulk third class mailing rates were available to the National, State and Congressional committees of the Democratic and Republican parties. The major parties pay 3.1 cents per letter, while all other parties pay 8.4 cents.

The district court ruled that the provision of the 1980 Postal Service Appropriation Act that allows the Democratic and Republican parties, but not minor parties or independent candidates, sharply reduced rates for bulk third class mailings is a violation of the first amendment and the equal protection component of the fifth amendment's due process clause. The court ordered that reduced mailing rates be made available to the plaintiffs.

The court stated that regulation of first amendment rights of expression must be content-neutral. The court quoted the Supreme Court in Police Department of the City of Chicago v. Mosley, 408 U.S. 95 (1972), that "...above all else, the first amendment means that the government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." The court held that the appropriation of this case is a direct subsidy of the mailing costs of selected parties and that a denial of this subsidy is content-based censorship in violation of the first amendment.

The court stated that it is arguable that a restriction based on nationwide popularity does not reflect a judgment regarding the content of the mail sent by "new" parties. But protection of unpopular ideas is the very essence of the first amendment. See Troyer v. Town of Babylon, 483 F. Supp. 1135 (E.D.N.Y. 1980). The court stated that "to suggest that a regulation that confers benefits on the basis of popularity is not content-based would require the court to draw an artificial distinction between the popularity and the substance of an idea.... The denial of the postal discount is unacceptable for it 'generates costs which burden the exercise of first amendment rights in direct proportion to the number of persons the speaker wants to reach.'" Troyer id.

The court stated that the fact that the government seeks to protect limited financial resources does not in this instance justify the denial of the constitutional right to express ideas different from those espoused by the majority. The court stated that, although austere fiscal periods necessarily force government to make difficult choices regarding the services it provides, the decision to restrict services cannot be made on the basis of the political views of the recipients of the service.

The court also held that the due process clause of the fifth amendment prohibits the federal government from denying any person the equal protection of the laws. See Weinberger v. Wisenfeld, 420 U.S. 636 (1975). Laws that affect a fundamental right are to be examined with strict scrutiny by the court. The law must be the least burdensome means available for achieving a compelling governmental interest.

The defense contended that the discount provision facilitates public expression, preserves scarce public resources, insures a manageable election process, and protects against factionalism. But the court decided that the interests purportedly protected by the 1980 Act did not survive impartial scrutiny and weighing. The court added that any standard that causes funds to be allocated to some candidates or parties and not to others is inherently suspect because it serves the self-interests of those responsible for establishing the standard.

Advertising and Solicitation - Reporting Requirements

FEC v. Central Long Island Tax Reform Immediately Committee, 616 F.2d 45 (2d Cir. 1980)

This case followed involved procedural requirements, some of which are included in the digest. The FEC had filed a civil complaint in the district court against the now-defunct Central Long Island Tax Reform Immediately Committee (CLITRIM) and the National Tax Reform Immediately Organization (National TRIM), charging that they had published a pamphlet costing over $100 and "expressly advocating the election or defeat of a clearly identified candidate" without complying with filing requirements of the Federal Election Campaign Act (FECA), 2 U.S.C. §434(e), and the disclaimer requirements of 2 U.S.C. §441d. When the defendents filed an answer claiming that the FECA and Federal Election Commission Regulations were unconstitutional on their face and as applied, the district court certified to the court of appeals the constitutional issues, as is required by 2 U.S.C. §437h(a).

Following the procedure adopted in Buckley v. Valeo, 519 F.2d 817 (D.C. 1975), the court of appeals remanded the case to the district court to take evidence, make factual findings, and certify to the court of appeals the record and the constitutional questions for resolution.

The district court discovered that CLITRIM was a part of a national network of TRIM committees established by the John Birch Society, Inc. The Society is not affiliated with any political party, committee or candidate and primarily serves the educational interests of its followers and not any pecuniary business interest. It is supported by membership dues and voluntary contributions. The Society publishes the TRIM (Tax Reforms Immediately) Bulletin. National TRIM researches, writes and mails to local TRIM committees "camera-ready" copy of the quarterly TRIM Bulletin with instructions for printing. The copy expounds 1) positions on economic and tax issues, 2) the voting records of all members of Congress on specific legislation concerning these issues, and 3) a commentary reflecting National TRIM's views on the merits of the bills identified.

Using the material received from TRIM, CLITRIM prepared a Fall 1976 TRIM Bulletin to report, among other things, on the voting record of a local Representative of central Long Island. These pages included a photograph of the Congressman and a chart of 24 votes cast by him, 21 of which were characterized as for 'Higher Taxes and More Government' and 3 as for 'Lower Taxes and Less Government.' CLITRIM's stand against higher taxes and 'Big Government' and in favor of lower taxes and 'Less Government' was made clear by slogans and commentaries. However, the leaflet did not refer to any federal election, to the Congressman's political affiliation or candidacy, or to any electoral opponent of the Congressman. Some 5,000 to 10,000 copies were handed out at the local railroad station, shopping centers and a public meeting at which the Congressman spoke. The cost of the printing was $135. Subsequently, leafletting activity ceased and CLITRIM was disbanded. However, several other local TRIM committees have engaged in similar publicizing of local Congressman's votes.

The court of appeals judged that under the teachings of United States v. Harriss, 347 U.S. 612 (1954), the usual en banc jurisdiction vested in the court by sec. 437h(a) of the Act did not prevent the court from deciding if the statutes under constitutional attack were being violated prior to deciding if the statutes were constitutional. In making this decision the court was following the basic principle that 'if a court can decide a case on non-constitutional ground, is should not stray into the field of constitutional analysis.' See New York Transit Authority v. Beazer, 440 U.S. 568 (1979).

The court concluded that 2 U.S.C. secs. 434(e) and 441d did not apply to defendants' conduct because the CLITRIM Bulletin of Fall 1976 contained nothing which could rationally be termed express advocacy of the election or defeat of a clearly identified candidate, as is required by Buckley v. Valeo, supra. The Supreme Court noted in Buckley that 'communications containing express words of advocacy of election or defeat' are terms such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' and 'reject,' 424 U.S. at 44. See also Federal Election Commission v. AFSCME, 471 F. Supp. 315 (D.D.C. 1979). The court remanded this case to the district court with directions to dismiss the complaint.

Apportionment and Redistricting - At-Large Elections

Aranda v. Van Sickle, 600 F.2d 1267 (9th Cir. 1979)

The plaintiffs, Mexican-American residents of the city of San Fernando, California, brought suit alleging that the city's at-large voting system was unconstitutional in that it denied Mexican-Americans equal protection and equal access to the political system.

The district court held that the plaintiffs had failed to prove that the at-large election system was deliberately conceived or operated to discriminate against a particular group, and the plaintiffs appealed.

The court adopted the opinion of the lower court and affirmed its action granting summary judgment to the defendants, who were once members of the city council and the mayor of the city, noting that the plaintiffs offered "remarkably little, and no substantial, proof" of their claim of discrimination or the restrictiveness of the electoral system.

The plaintiffs contended that the city of San Fernando is racially polarized. They noted that, although Mexican-Americans comprise almost half the population of the city, only three have been elected to city council since 1911; the trial court found that the highest percentage of registered Mexican-American voters was 28.7 percent in 1972 and attributed the dearth of Mexican-American council members to voter apathy. The plaintiffs alleged police harrassment of Mexican-Americans at the polls in the 1972 election and noted that in 1964 only three out of 27 polling places in the city were located in public buildings, while many were located in the private homes of white citizens; the trial court found that there was no evidence of police harrassment at the polls. The plaintiffs charged that Mexican-Americans are widely and consistently underrepresented on city commissions and on the city payroll; the trial court found that this was due to "low civic awareness which is the result of high unemployment and low levels of education." The plaintiffs charged that the city is unresponsive to the needs of the Mexican-American community, citing specific examples, such as the failure of the city to place a stoplight at an intersection in the barrio despite a high incidence of accidents at the intersection; the trial court maintained that the government is not unresponsive.

In its opinion, the court acknowledged that an appeal from a complaint charging intentional discrimination against a municipal government places the court in a legal area without precise guidelines from the Supreme Court. However, the court offered the case of Whitcomb v. Chavis, 403 U.S. 149 (1971), which held that, because an interest group has no governmental seats of its own, it is not necessarily being denied access to the political process. The court also held that there is no record of protracted racial discrimination in the city; i.e., no segregated schools, no tests to qualify voters, and no refusal to register Mexican-Americans.

Finally, the plaintiffs construed the city's statement that electoral districts in some cities would artifically limit qualified people from serving on city councils and would make it difficult for some cities to recruit candidates in every district as suggesting that no qualified Mexican-American candidates will offer themselves as candidates. The trial court found the city's contention "reasonable and not arbitrary or capricious" since San Fernando is a small, compact city with a population of approximately 17,000 persons. The court further maintained that the at-large scheme allows all persons, regardless of race, to participate in the political process on an equal basis.

Apportionment and Redistricting - At-Large Elections

Voter Information Project v. City of Baton Rouge, 612 F.2d 208 (5th Cir. 1980)

Constitution challenges were raised to the at-large schemes of electing city judges in Baton Rouge and state judges in East Baton Rouge Parish under 42 U.S.C. § 1983. The district court dismissed the suit, holding that the "one man one vote" principle does not apply to the election of judges. The court of appeals noted that the district court assummed that the "one man one vote" principle was the exclusive theory of the plaintiffs' complaints. The plaintiffs contended that the at-large schemes diluted the voting strength of black citizens and prevented blacks from being elected as judges. Plaintiffs stated that, since most of the black population of Baton Rouge and East Baton Rouge Parish is concentrated in a few geographical areas, black citizens could, under a single-member district plan, elect at least some black judges.

The court, relying on such cases as White v. Register, 412 U.S. 755 (1972), and Gomillion v. Lightfoot 364 U.S. 339 (1960), held that the district court erred in dismissing the complaint under F.R. Cir. P. 12(b)(6). The court also held that, if the plaintiff can prove that the purpose and effect of the at-large election schemes in Baton Rouge is to dilute the voting strength of black citizens, they are entitled to some form of relief.

Apportionment and Redistricting - At-Large Elections - City Legislature

Nevett v. Sides, 571 F.2d 209 (5th Cir. 1978). Certiorari denied U.S. Sup. Ct. 5/19/80 (Doc. No. 78-492).

The court of appeals held that an at-large councilmanic election in a community with close racial balance does not necessarily violate the fourteenth and fifteenth amendments if there is no finding of discriminatory intent. According to the court, a showing of racially motivated discrimination is a necessary element in an equal protection voting dilution claim and an illicit motivation is a prerequisite to finding discrimination that would be violative of these amendments. The court noted that the Supreme Court and the Fifth Circuit Court of Appeals have repeatedly rejected contentions that at-large districting is per se unconstitutional. The court noted that there was no demonstration of a lack of access to the political processes of the municipality and that it was not established that the city council was unresponsive to the needs of the black community. In addition, the court found that six blacks were elected to the city council in 1968 and that the failure of black candidates to attain office in 1972 was due not to invidious racial discrimination but to a failure of blacks to vote.

Apportionment and Redistricting - Board of Education Positions

Baker v. Regional High School Dist. No. 5, 476 F. Supp. 319 (D. Conn. 1979)

In this case the issue was whether the existing apportionment plan for the board of education for a regional high school district was consistent with the one person-one vote requirement of the fourteenth amendment. The district consisted of three towns, Orange, Woodbridge and Bethany, each of which had substantially different populations, Orange being approxiately twice as populous as Woodbridge and four times as populous as Bethany. The apportionment plan being discussed was the third plan proposed for this district. Previous plans had been either declared unconstitutional by this court or rejected by the voters. The court had retained jurisdication of the case. The plan now in effect, having received approval by both the State Board of Education and by the voters of each town, provided for a thirteen member board, seven members elected by voters from Orange, four by voters from Woodbridge, and two by voters from Bethany (the 7-4-2-plan). Each member was to have one vote. The apportionment of the thirteen seats was roughly consistent with the population of the three towns. In addition, there was the requirement that the board may not act on a majority composed solely of representatives from the Town of Orange or solely of representatives from the Towns of Woodbridge and Bethany.

Plaintiffs conceded that the plan's distribution of board members among the three towns met the one person-one vote requirement of the equal protection clause but expressed doubts as to whether the provision forbidding actions by a majority composed solely of the members from the largest town or from the two smaller towns was constitutional. Plaintiffs did not seek invalidation of the plan but instead asked the court not to decide the case partly because a decision at this time would be 'jurisprudentially premature and unwarranted.' Intervenors applied to this court for a determination that the 7-4-2 plan was constitutional.

The court denied intervenors request for a declaratory judgment and terminated its jurisdiction without prejudice to a future lawsuit. The court stated that declaratory judgments are always a matter of the court's descretion, and that it seemed particularly appropriate to defer such a declaration when persuasive prudential factors are involved. See California Bankers Association v. Shultz, 416 U.S. 21 (1974). In this first impression decision, the court determined that the constitutionality of the plan could be best determined once it has been in operation for a period of time. The court reached this conclusion after determining that it would be difficult to conclude that the 7-4-2 plan was unconstitutional on its face since there was no clear indication that any particular group would be discriminated against or placed at a permanent disadvantage. The court stated that subtle strategic considerations among all the members might distribute the effects of the provision through a broad range of situations.

Apportionment and Redistricting - County Plan

Sanchez v. McDaniel, 615 F.2d 1023 (5th Cir. 1980). Certiorari granted 10/14/80 U.S. Sup. Ct. sub nom. McDaniel v. Sanchez (Doc. No. 80-180)

This is an appeal of a district court decision concerning apportionment. The district court had ruled that the 1968 Kleberg County, Texas, apportionment plan violated the constitutional principle of one man, one vote and ordered that a reapportionment plan be submitted. When the new plan was submitted to the district court, it was approved for use in the 1980 primary and general elections. The district court held that the adopted plan was not subject to the preclearance provisions of the Voting Rights Act because it was a court-ordered plan rather than a court-adopted plan.

The court of appeals vacated and remanded the judgment of the district court. The court referred to Wise v. Lipscomb, 437 U.S. 535 (1978), which considered the relationship between court-ordered reapportionment plans and legislative reapportionment plans. The Supreme Court recognized in Wise that the reapportionment of legislative bodies is the responsibility of the legislature and that it is appropriate "to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan." The court of appeals held that a proposed reapportionment plan submitted by a local legislative body does not lose its status as a legislative rather than court-ordered plan merely because it is the product of litigation. The court based its decisison on the Supreme Court statement in Wise, that 'a new reapportionment plan enacted by a State, including one purportedly adopted in response to invalidation of the prior plan by a federal court will not be considered 'effective as law,'...until it has been submitted and has received clearance under § 5 [of the Voting Rights Act of 1965].'

Apportionment and Redistricting - Decennial Census

Young v. Klutznick, No. 80-71330, (E.D. Mich. September 25, 1980) (Injunction stayed pending 6th Cir. App., U.S. Sup. Ct. Justice Stewart, application No. A-533, 12/30/80)

The question addressed in this case is "[c]an a headcount of the persons in the United States, made on the 1st of April, 1980, and unadjusted for an acknowledged undercount, be used for the reapportionment of the United States House of Representatives, and the distribution of federal funds among states and sub-state units of government."

Plaintiffs, the mayor of the City of Detroit and the City of Detroit, claim that, unless there is an adjustment for the undercount, individuals who live in urban areas with high Black populations and those who live in areas with high Hispanic populations will be deprived of their right of equal representation in the House of Representatives of the United States and in the State Legislature of Michigan and will lose substantial sums of money, since more than 100

federally-funded programs are tied in one way or another to census figures. Plaintiffs claim a population count which uses only raw, unadjusted census data does not accurately reflect the actual population of the states and governmental units within the states. They also claim that about four times as many Blacks as Whites are undercounted in urban areas and an equal number of Hispanics are undercounted in the areas where they are located throughout the United States.

The court ordered the defendants, the Secretary of Commerce of the United States and the Director of the United States Bureau of the Census, to adjust population figures for the 1980 census at the national, state and sub-state level to reflect the undercount, and to adjust the differential undercount to prevent the known undercount of Blacks and Hispanics, as well as Whites. The court stated that art. 1, sec. 2, clause 3 of the Constitution, which provides for the taking of a decennial census, arose out of an attempt to preserve the equality of vote for the House of Representatives. Wesberry v. Saunders, 376 U.S. 1 (1964). The court stated that the necessity for an accurate population count among and within states is inexorably tied to fair apportionment of congressional seats. The court quoted Reynolds v. Sims, 488 U.S. 533 (1963), which stated that, "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."

The court relied on extensive expert testimony as to the underlying causes of the differential undercount. The court noted that the undercount gives rise to a constitutional violation of the one-person one-vote principle because Blacks simply are not counted as much as Whites, particularly in the inner cities of this country. The court stated that it had been established that Hispanics, as a whole, reside in segregated urban areas or in non-urban areas in the southwest in segregated groups. All the experts agreed that novel problems are presented in deriving an estimate of the undercount for Hispanics arising from the fact that accurate birth, death, immigration and emigration statistics are not available.

The court stated that it is clear that the decennial census is not a simple, straightforward headcount. Rather, the decennial census is a relatively accurate estimate of the population developed through the use of self-enumeration by questionnaire, statistical techniques, and computer-control devices. The court stated that the courts that have considered this matter are unanimous in holding that the method, as opposed to the fact, of enumeration under the census is a procedural matter and as such is within the discretion of the Bureau, subject to the Constitution and the disapproval of Congress, the Secretary of Commerce, or the courts themselves. See Lampkin v. Conner, 360 F.2d 505 (D.D.C. 1966); Newark v. Blumenthal, 457 F. Supp. 30 (D.D.C. 1978).

Finally, the court held that a close reading of 13 U.S.C. 141(b), (c) reveals that the time limits adopted by Congress are directory rather than mandatory. The court stated that, if it is necessary that the Census Bureau be given more time to arrive at a more accurate count at the state and sub-state levels, a reasonable extension of time can be granted.

Apportionment and Redistricting - Voting Dilution and At-Large Elections

McIntosh Cty. NAACP v. City of Darien, 605 F.2d 753 (5th Cir. 1979)

The appeals court reversed and remanded the decision of the district court in this case involving voting dilution. The plaintiffs, members of organizations representing black voters of Darien, Georgia, charged that the city's at-large system of selecting officials (mayor and four-seat council) denies blacks equal access to the political process in violation of the fourteenth and fifteenth amendments and 42 U.S.C. secs. 1971(a)(1) and 1973. The district court dismissed the suit, holding that the plaintiffs had failed in their burden of proving dilution.

Basing its reversal on the district court's failure to indicate in sufficient detail its findings of fact and conclusions of law (as required by Fed.R.Civ.P. 52(a)), the appeals court stressed that it did not suggest a particular outcome for the case on remand. Nor did it honor the plaintiff's argument that remand for reconsideration was unnecessary because the factual record is sufficient to prove dilution. The court noted that the district court failed to discuss evidence that tended to support the plaintiff's allegations, and that, although the plaintiffs bear the burden of proving dilution, once they introduce evidence of sweeping and pervasive past discrimination, the responsibility for proving that such discrimination has no present effect on the political process shifts to the defendants.

Referring to its decision in Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973), the court outlined the four tenets used to assess the question of the dilution of a minority vote: (a) whether minority group members have equal access to the political process; (b) whether past discrimination has the present effect of discouraging minority participation in the electoral process; (c) whether the policy underlying the use of the at-large district is rooted in racial discrimination; and (d) whether the governmental body in question is responsive to minority needs.

The court noted, further, that the question of voting dilution is twofold: (a) whether an at-large electoral system has the effect of diluting the minority's voting power; and (b) whether the dilutive effect is intended. See Cross v. Baxter, 604 F.2d 875 (5th Cir. 1979).

The district court held that none of the four Zimmer tenets showed unconstitutional dilution in this case. For example, the district court held that the plaintiffs failed to prove inequality of access, basing its conclusion on the lack of any slating organization in Darien, on the lack of unequal requirements for achieving a place on the ballot, and on the lack of evidence that blacks are prevented from running for office.

The appeals court reasoned that this tenet of the Zimmer case is broader in scope and actually encompasses barriers to minority participation at other levels of the political process, such as registration, voting and campaigning. And although the plaintiffs introduced evidence that a small group of

whites acts as an informal slating organization that wields considerable control over city politics by supporting and endorsing candidates and paying their qualifying fees, the district court failed to consider this evidence.

On the question of past discrimination, the plaintiffs introduced evidence that a 1976 purge removed the names of 137 voters, all black, from the city voter rolls. The appeals court noted that, although purges with disproportionate racial impact violate sec. 5 of the Voting Rights Act, the district court did not discuss this evidence.

Citing other issues which the district failed to address, the appeals court finally considered the question of the city's responsiveness to minority needs. Although both plaintiffs and defendants introduced "voluminous evidence" of responsiveness and unresponsiveness, the district court presented its conclusions of law in one brief paragraph, without reasons, compelling the appeals court to conclude that it was unable to review "meaningfully" the judgment that the plaintiffs had failed to prove unresponsiveness.

Although the appeals court upheld the district court's finding that the policy underlying at-large elections in Darien is not racially motivated and judged that a governmental body's failure to act in accordance with the wishes of a minority group is not necessarily affirmative evidence of unresponsiveness, its rejection of the district court's conclusions necessitated a remand.

Ballots - Access Requirement - Independent

McLain v. Meier, 612 F.2d 349 (8th Cir. 1979)

Plaintiff, candidate for the U.S. House of Representatives from North Dakota, appealed this civil rights case after the district court denied preliminary relief and summarily dismissed the complaint that the form of ballot to be used in the election discriminated against independent candidates and candidates of small minority parties in violation of the first and fourteenth amendments. The American Civil Liberties Union (ACLU) entered into the case in support of the plaintiff and was permitted to file a supplemental brief on his behalf. The ACLU challenged the constitutionality of chap. 16-11-05, which stipulates the form that the ballot is required to take (ACLU contended that an independent candidate is inevitably consigned to an inferior ballot position), and chap. 16-04-20(4), which designates that the two major parties (Democratic and Republican) are automatically assured "party columns" on the primary election ballot while a "new party" may gain recognition as a party only if it is able to poll at least five percent of the total number of votes cast for Governor in the preceding general election and if a petition asking for a place on the primary ballot and containing a statement of platform principles of the new party and signed by not less than 15,000 qualified electors is filed with the Secretary of State before June 1 of a general election year. ACLU contended that chap. 16-04-20(4) was rendered invalid by the 15,000

signature requirement, by the fact that the petitions for recognition must be filed more than five months before the general election and by the fact that a "new party" is required to hold a primary election.

The court, aware that the record made up in the district court left a great deal to be desired due to the fact that the plaintiff was proceeding pro se, noted that the validity of each of those statutes was at least suspect in view of the teachings of MacBride v. Exon, 558 F.2d 443 (8th Cir. 1977), and held that the judgment of the district court was vacated and remanded. The court directed that the district court permit a clarifying amendment to the complaint to be filed within a limited period of time. The court further directed that, if no amendment was filed, the original complaint should be dismissed as far as the plaintiff was concerned but without prejudice to the rights of any other parties desiring to attack the statutes in question.

Ballots - Access Requirement - Minority Party

Dean v. Austin, 602 F.2d 121 (6th Cir. 1979). Certiorari denied U.S. Sup. Ct. 1/21/80 (Doc. No. 79-798).

This case was a constitutional challenge to Public Act 94 enacted by the Michigan legislature in 1976. The Act provided that, in order for new parties to qualify for ballot position, they had to receive, in addition to submitting petitions, a vote total of three-tenths of 1% of the total number of voters appearing at the primary as shown by the poll books. Plaintiffs, representatives of the U.S. Labor Party, attempted to obtain a preliminary injunction from the district court requiring the Secretary of State to include the U.S. Labor Party on the November 1978 ballot. Plaintiffs argued that the confusing voting instructions resulted in a high percentage of voided ballots among the ballots which had been cast at the primary for placing their party on the new election ballot. When the district court denied the preliminary injunction, the party representatives appealed. Plaintiffs argued that, although the election had long since been held, this case was one of the exceptions to the mootness rule because it belonged in the category of cases which repetitively present constitutional issues which are of a class 'capable of repetition, yet evading review.' See Southern Pacific Terminal Co. v. ICC, 219 U.S. 498 (1911).

The court dismissed the case, referring to Hudler v. Austin, 419 F. Supp. 1002, summarily aff'd 430 U.S. 924 (1976), in which the three-judge court rejected a federal constitutional attack upon 1976 Mich. Pub. Act 94. The court suggested that a specific warning in the Party Qualification Section of the ballot to the effect that the entire partisan ballot would be voided if a vote were cast there and in either major party column might serve to mitigate the risk of voter mistake in the future. The court noted that, since there was no reason to believe that the U.S. Labor Party would be subjected to the same inadequate ballot instructions in the future, the exception to the mootness doctrine as stated in Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173 (1979), had not been met.

Ballots - Party Affiliation Designation

Curry v. Kennelly, No. H-80-403 (D. Conn. August 13, 1980)

Plaintiff, a registered voter in the State of Connecticut and an announced candidate for re-election in 1980 to the state senate, joined with several persons, including John Anderson, independent candidate for President of the United States, to challenge the constitutionality of Connecticut General Statutes sections 9-453a and 9-453b. These sections regulate nominating petition forms. Section 9-453a provides that nominating petition forms must be on the form prescribed and provided by the secretary of the state. Section 9-453b allows candidates to designate a party on his nomination petititon form regardless of whether that candidate is affiliated with the party or whether they share a similar political view or ideology. The secretary of state's office issued nominating petitions employing any one party designation on a first come, first served basis without further restriction. Once the secretary's office issued a form employing a particular party designation for any given office, no other candidate for that office could obtain a nominating petition using the same party designation.

Cross-claimant John Anderson requested by letter to the secretary of state that no candidates seeking to use the party designation "Anderson Coalition" be permitted to do so except those candidates pledged as presidential electors for John Anderson. The secretary announced publicly that she had no authority to prohibit other petitioning candidates from appearing on the ballot under the "Anderson Coalition" party designation.

The court held that sections 9-453a and 9-453b, as applied by the secretary of state, placed an unconstitutional burden on Plaintiff Curry's right to vote and participate in a fundamentally fair election free of deception and confusion. The court also held that these sections violate the Anderson Defendant's rights under the first and fourteenth amendments to associate freely for the purpose of advancing their common political beliefs.

The court held that a ballot bearing the names of candidates on the same row as John Anderson under the party designation "Anderson Coalition" suggests to a reasonable voter that a political association or affiliation exists when in fact no association with John Anderson's political views or goals does exist. The court stated that this ballot "engenders per se deception and confusion. Such deception on the face of the ballot debases the rights of all voters, see Williams v. Rhodes, 393 U.S. 23 (1968); Smith v. Cherry, 489 F.2d 1098 (7th Cir. 1974)." The court noted that in Reynolds v. Sims, 377 U.S. 533 (1964), it was stated that "[t]o the extent that a citizen's right to vote is debased, he is that much less a citizen" and that "[o]ther rights, even the most basic, are illusory if the right to vote is undermined." Wesberry v. Saunders, 376 U.S. 1 (1964).

In addressing itself to the free association rights of the Anderson Defendant, the court noted that the campaign itself reflects the exercise of core first

amendment rights. The court cited Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173 (1979), in which the Supreme Court recognized that an election campaign is a means of disseminating ideas as well as attaining political office. The court noted that the constitutional right to freedom of political associations carries with it a concomitant right to be free from coerced or compelled political association. See Abood v. Detroit Board of Education, 431 U.S. 209 (1977). The court stated that the courts have upheld state legislation designed to protect political parties--a common form of political association--from intrusion by persons espousing adverse political principles. See Ray v. Blair, 343 U.S. 214 (1952).

The court concluded that the law is well established that substantial burdens on the constitutional right of association are prohibited unless essential to serve a compelling state interest. In this case the counsel for the state concedes that the statute at issue as applied and administered fails to serve any legitimate state interest, much less a compelling one.

Boards and Commissions - Administrative Remedy Before FEC

United States v. Intern. Union of Operating Eng., No. 77-3107 (9th Cir. Oct. 1, 1979). Certiorari denied U.S. Sup. Ct. 2/19/80 sub nom. International Union of Operating Engineers, Local 701 v. U.S. (Doc. No. 79-895).

The International Union of Operating Engineers was indicted for violating the Federal Election Campaign Act, and the district court dismissed the indictment on the ground that the Attorney General had failed to exhaust administrative remedies before the Federal Election Commission. The Court of Appeals concluded that Congress did not intend to impose this limitation upon the power of the Attorney General to prosecute offenses and reversed the decision. The court held that, while the law provides that the

Federal Election Commission may refer complaints to the Department of Justice for prosecution after administrative processing, it does not imply that administrative process and referral are prerequisite to prosecution.

The court noted that the appellees' argument referred to documented statements, made in debate on the 1976 amendments to the act, by a member of Congress who led the opposition to the act in the Senate.

The court cited a memorandum of understanding between the Department of Justice and the Federal Election Commission, which states that the Department of Justice may investigate and prosecute willful violations prior to exhaustion of the Federal Election Commission's investigative and conciliatory efforts. Giving credence to the interpretation of a statute by the agencies charged with its administration, the court reversed the decision of the lower court.

Boards and Commissions - FCC Ruling - Right of Access

CBS, Inc. v. Federal Communications Commission, 48 LW 2622 (D.C. Cir. March 14, 1980). Petitioned for certiorari 8/11/80 U.S. Sup. Ct. (Doc. Nos. 80-207, 80-213 and 80-214)

In these consolidated appeals the three major networks, CBS, NBC and ABC, petitioned the court for a review of orders of the Federal Communications Commission (FCC). The FCC had ruled that the three networks had violated their obligation to provide "reasonable access" to the Carter-Mondale Presidential Committee (CMPC) in accordance with sec. 312(a)(7) of the Campaign Communications Reform Act. This section authorizes the FCC to revoke a broadcaster's license "for willful or repeated failure to allow reasonable access to or to permit purchase of reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for federal elective office on behalf of his candidacy."

On October 11, 1979, the CMPC had asked the three major television networks to make available to it a half-hour of television time between 8:00 PM and 10:30 PM on either December 4, 5, 6 or 7. CMPC intended to present a documentary outlining President Jimmy Carter's record and that of his administration. The program was to be presented just after the President's formal announcement of his candidacy, and it was designed to set the tone for the President's campaign. The networks declined to make the requested time available--saying in essence that it was too much time and too soon in the race.

The court of appeals agreed with the FCC interpretation of section 312(a)(7). The court said that as implemented this section "is a constitutionally acceptable accommodation between, on the one hand, the public's right to be informed about elections and the right of candidates to speak and, on the other hand, the editorial rights of broadcasters."

The court stated that review of the legislative history of the provision leads to the conclusion that the section created a right for federal elective office candidates to advocate their candidacies by direct broadcast communication. The court stated that such a right is properly called an affirmative right because it exists regardless of the actions of the broadcaster. The court contrasted an affirmative right with a contingent right, stating that a contingent right must be activated by some prior event. Access achieved under the equal time provision of section 315 is a contingent right of access.

The court held that the Supreme Court's dictum in Columbia Broadcasting System, Inc. v. Democratic National Committee, 412 U.S. 94 (1972), that section 312(a)(7) did not create a new right of access, is not controlling here. "The Court's dictum is not a denial that Congress had enacted, in 1971, a very specific, obligatory right of access for federal candidates."

The court held that permitting the FCC to decide the question of when a campaign begins does not violate the networks' first amendment rights. The court stated that it is the editoral process (selection and choice of material) that

is protected by the first amendment. A determination of when statutory obligations attach is not an editorial decision. The court held that the FCC's standards for determining, on a case-by-case basis, when an individual candidate's campaign begins for right of access purposes and whether a broadcaster has granted "reasonable access" in response to a candidate's request for access, are reasonable. The court noted that the FCC looked to a variety of objective indicia in determining that a campaign has begun: 1) announcements of candidacy; 2) the establishment of national campaign organizations; 3) fund raising activities; 4) endorsements; 5) media coverage; and 6) the progress of the delegate selection process.

Finally, the court judged that the FCC's guidelines for determining whether reasonable access has been granted is eminently reasonable. The court did state that the agency failed to headline its policy as clearly as it might have. Some FCC considerations to guide broadcasters in determining whether to grant specific requests for access are as follows: 1) the individual needs of the candidate; 2) the amount of time previously provided to the candidate; 3) potential disruption of regular programing; 4) the number of other candidates likely to invoke equal opportunity rights if the broadcaster grants the request before him; and 5) the timing of the request.

Boards and Commissions - Selection of Members

Byrd v. City of San Antonio, 587 F.2d 184 (5th Cir. 1979). Certiorari denied U.S. Sup. Ct. 10/1/79 (Doc. No. 78-1668).

Suit was filed in the court of appeals to redress alleged federal constitutional and statutory deprivation of rights claiming that the procedure used in selecting members of the San Antonio Public Service Board deprived plaintiffs of their right to vote and denied them equal protection and the right to a republican form of government.

The court affirmed the district court's ruling that the board was not a form of government but a board of managers. The court further stated that the constitutional and statutory provisions cited by the plaintiffs would apply only to members of the city council.

Campaign Financing - Contributions - Limitations

Let's Help Florida v. McCrary, 621 F.2d 195 (5th Cir. 1980)

Complaint was filed to challenge the constitutionality of the Florida statutes that restrict the size of contributions that an individual could contribute to any single political committee in a referendum election. The district court declared the statutes unconstitutional and the plaintiffs appealed. The appeal was taken and consolidated with another appeal of a judgment which held unconstitutional the limitation on contributions to the committees organized in connection with countywide elections.

Plaintiffs alleged that sec. 106.08(1)(e) and 106.08(1)(d) of the Florida Statutes Annotated violated the first amendment right of persons by restricting the size of contributions to a single political committee in a referendum election. In Buckley v. Valeo, 424 U.S. 1, 26 (1976), the supreme court recognized as a justification for restricting contributions the prevention of quid pro quo corruption between a contributor and a candidate.

The court of appeals held that the actual or appparent corruption of candidates, which the supreme court found so compelling in Buckley, does not justify restrictions upon political contributions in referendum elections. People decide the pertinent political issue for themselves when voting on a referendum proposal. The court held that the district court properly enjoined enforcement of the statutes.

Campaign Financing - Contributions - Limitations

Mott et al v. Federal Election Commission, No. 79-3375, (D.D.C. June 30, 1980)

In this action plaintiffs alleged that specific sections of the Federal Election Campaign Act (FECA) of 1971, as amended, FEC regulations, and FEC advisory opinions and opinion letters are unconstitutionally overbroad and vague because they interfere with the plaintiffs' ability to make certain contributions and independent expenditures.

Plaintiff Stahlman alleged that she wished to contribute more than the $5,000 limit, 2 U.S.C. sec. 441(a)(1)(c), to the National Conservative Political Action Committee (NCPAC) but claimed that the FEC would interpret it to be a contribution in excess of the statutory limits. Also, plaintiff claims that the contribution would be subtracted from the $25,000 annual limit on contributions permitted by 2 U.S.C sec. 441(a)(3). Another plaintiff stated that he wished to contribute to a "single-issue" organization but specified neither the amount nor the recipient of his donation. Plaintiff also stated that he wished to join with other individuals in purchasing advertising space "in order to publicize his views" but claimed that the FEC would consider this joint purchase to be a "political committee under FECA and require it to register as such. Plaintiff claimed that the amount of money spent on the advertising space would be used against the dollar limits imposed by FECA on contributions to political committees by an individual.

The court found that claims to purchase advertising space were not ripe for judicial decision. According to the limited facts in the complaint, the court could not determine whether the joint purchase of the advertising space would be under the sections of FECA regulating contributions to political committees.

The court referred to Buckley v. Valeo, 424 U.S. 1 (1976), in answering the Constitutional questions which the plaintiffs' claim raised: 1) the $25,000 limit on contributions was upheld as a "corollary of the basic individual contribution limitation" found to be constitutional; 424 U.S. 1 at 38; 2) the

$25,000 limitation was not unconstitutional, and the court sustained the Act's definition of "contribution" which includes "dollars given to another person or organization that are earmarked for political purposes...," 424 U.S. 1 at 24; and 3) limitations were set to prevent the exerting of influence from large individual contributions.

Campaign Financing - Contributions - Limitations

National Conservative Political Action Committee v. Federal Election Commission, No. 78-1543 (D.C. Cir. Mar. 11, 1980)

Appellants, National Conservative Political Action Committee (NCPAC), challenged the validity of the Federal Election Commission (FEC) regulation 11 C.F.R. §110.1 (g)(1). They alleged that it violated the equal protection clause of the fifth amendment and that it was contrary to the section of the Federal Election Campaign Act (FECA) which governs contribution limitations (2 U.S.C.§441a(1976)). This regulation provides that contributions made to retire debts resulting from elections held prior to January 1, 1975, are not subject to limitations as long as contributions and solicitations to retire these debts are clearly designated and used for that purpose. An FEC advisory opinion, A.O. 1978-1, was also challenged. The advisory opinion, issued in response to a request from the Democratic National Committee (DNC), approved of the DNC's proposed solicitation to retire pre-1975 campaign debts without reference to contribution limitations imposed by the 1976 amendments to the FECA. Appellants contended that the advisory opinion had not been publicized as is required by the Act as well as by FEC regulation. Appellants sought declarations of unlawfulness and invalidity as to the regulation and the advisory opinion as well as injunctive relief against both the Commission and the DNC.

The district court held that there was nothing in the language of §441a or in the legislative history of the Act which suggested that the Act's contribution limitations extended to pre-1975 campaign debts. The lower court also held that the FEC regulation did not appear contrary to either the specific terms of the FECA or to Congressional intent underlying the Act. Nor does the regulation in any way deny equal protection of the laws to persons and entities subject to the contribution limitations provisions of the statute. Finally, the court ruled that the manner in which the regulation was promulgated accorded with the requirements of the Administrative Procedure Act.

The court of appeals affirmed the lower court with a modified opinion. The court approved dismissal of the charges against the DNC on the grounds that the Appellants did not exhaust administrative remedies available prior to bringing suit because they failed to file comments on the regulation in question when it was proposed and on the advisory opinion request by the DNC. Although the NCPAC did file a complaint with the FEC regarding the DNC solicitation after its suit was rejected by the district court, it did not "...provide the commission with any information, documentation, or even legal theories to support the complaint, as the commission requested they do."

The court disagreed with the district court's conclusion that appellants lacked standing to challenge the advisory opinion and that the issues raised were not ripe for judicial decision. The court held that the commission did not afford interested parties an adequate opportunity to comment on the advisory opinion before its issuance. The court noted that, even though neither the Act nor the commission's regulation required actual publication of advisory opinion requests, the commission had announced that advisory opinion requests would be published in its monthly newsletter. The court held that agencies were under an obligation to follow their own regulations, procedures, and precedents, or to provide a rational explanation for their departure. See Vitarelli v. Seaton, 359 U.S. 535 (1959). The court, therefore, ruled that A.O. 1978-1 "was unlawfully issued and is without force and effect."

Campaign Financing - Contributions - Private and Public

Republican National Committee v. Federal Election Commission, 487 F. Supp. 280 (S.D.N.Y. Questions answered 616 F.2d 1. Judgment affirmed U.S. Sup. Ct. 4/14/80 (Doc. No. 79-1373).

The Republican National Committee brought suit seeking declaratory and injunctive relief against the enforcement of certain sections of the Federal Election Campaign Act (FECA)(i.e., 26 U.S.C. 9003(b) and 9004), and the court dismissed their complaint.

The plaintiffs contended that the provisions of FECA which prohibit a major-party candidate from accepting both public and unlimited private funding violate the constitutional rights of the candidate and his supporters. Claiming that FECA violates their first amendment rights, the plaintiffs sought to accept both unlimited private and public campaign funds. The court found that the Campaign Act neither violated the rights of candidates nor their supporters.

Noting that FECA requires a candidate to choose between two methods of exercising the same constitutional right and therefore does not diminish that right, the court referred to Buckley v. Valeo, 424 U.S. 1 (1976), which held that Congress intended public financing as a substitute for private contributions, and concluded that campaigns can be, and have been in the past, successfully carried out by public financing. The court concluded that, because a candidate is free to solicit, receive and spend unlimited private funds, the law does not violate the first amendment rights of either the candidate or his supporters.

The court found, moreover, that, even if the law did place a burden on the candidate's constitutional rights, it would still be within the limits of the Constitution since it serves a compelling state interest, and offered as evidence Congress' reasons for instituting the public financing laws: public funding not only eliminates the need for a candidate to spend vast amounts of time and energy in fundraising at the expense of time spent in debating issues and communicating with the electorate, but also lessens a candidate's reliance on private contributors and the obligations that such contributions imply.

The court concluded that, if candidates were permitted to solicit unlimited private funds as well as receive public funds, the purpose of public funding would be defeated.

The plaintiffs also charged that the law's spending limitations place a challenging candidate at a disadvantage, since an incumbent necessarily commands more attention and has public facilities at his disposal. Acknowledging that an incumbent does indeed have significant advantages, the court denied that this inequality would necessarily be diminished under private financing and held that to require public funding to equalize the differences between candidates would distort its purpose, which is to provide an alternative to private financing and the burdens it entails.

Finally, the plaintiffs charged that the law discriminates against the Republicans, who do not receive the support of labor unions, which are allowed by law to spend unlimited funds on certain specified political activities. The court found that organized labor's activities, which consist of communicating with members and their families and encouraging voter registration, and which are allowed by law, are equivalent to the political activities of corporations, which also communicate with their employees and their families and with their stockholders. Since both labor unions and corporations are prohibited from making contributions or expenditures in connection with a presidential campaign, and the plaintiffs' charge here is not against the constitutionality of the law but upon its alleged non-enforcement, the court found that it could not resolve such an issue.

The court dismissed the plaintiffs' claim insofar as it sought to prove the unconstitutionality of the public funding act. Plaintiffs intend to take their case to the Supreme Court.

Campaign Financing - Corporate - Political Action Committee

Federal Election Commission v. National Right to Work Committee, No. 77-2175, (D.D.C. April 24, 1980)

In this court action the Federal Election Commission (FEC) and the National Right to Work Committee (NRWC) filed cross-motions for summary judgment. The FEC charged that in 1976 the NRWC unlawfully solicited contributions from persons who were not members of that organization in violation of sec. 441(b)(4)(A) and (C) of the Federal Election Campaign Act of 1971 (FECA). These sections forbid a corporation without capital stock to solicit contributions from persons other than its members.

The NRWC maintained that 1) the exemption for solicitations by membership organizations and non-stock corporations was unconstitutionally vague in that key terms were not defined; 2) if the statute was construed broadly enough to be constitutional, the persons solicited by NRWC did qualify as its members; and 3) that the FECA's restrictions on the classes of persons a corporation may solicit violates first amendment rights of freedom of speech and association.

The NRWC is a non-profit corporation without capital stock. Its purpose is to attack the political power of labor unions. The committee's articles of incorporation provide that it shall not have members. The Employee Rights Campaign Committee (ERCC) is a separate segregated fund established and conrolled by NRWC. It is empowered to accept contributions and make expenditures for candidates who share NRWC's philosophy. In 1976, NRWC mailed over 267,000 letters soliciting contributions to ERCC and raised $77,474.

The court held that the NRWC and ERCC had knowingly and willfully violated 2 U.S.C. sec. 441b by soliciting funds to ERCC from persons other than members of NRWC. The court based this finding on the fact that the NRWC was very familiar with the Act and its legislative history. The court stated that "NRWC has claimed the membership exception while at the same time proclaiming itself to be without members in nearly every other context." Furthermore, when the NRWC requested an advisory opinion from the FEC on its right to solicit, it concealed the fact that its articles of incorporation stated that the committee would have no members.

The court held that the exemption for non-stock corporations was not impermissibly vague. Singling out the challenged term "member," the court held that the term "encompasses persons who have interests and rights in a organization similar to those of a shareholder in a corporation and a union member in a labor union."

The court stated that, although the Supreme Court has never considered the constitutionality of the general rule against corporate and union expenditures, the lower courts have examined and upheld the restrictions. See United States v. Boyle, 482 F.2d 755 (D.C. Cir. 1973), and United States v. Chestnut, 394 F.Supp. 581 (S.D.N.Y. 1975), aff'd 533 F.2d 40 (2nd Cir. 1976).

The court held that the Supreme Court's decision in First National Bank v. Bellotti, 435 U.S. 765 (1978), which affirmed corporate first amendment rights with regard to referendum elections, was not pertinent to this case.

The court enjoined NRWC and ERCC from soliciting persons for contributions to ERCC and required ERCC to refund all money collected as a result of the 1976 solicitations. The court also imposed a civil penalty of $10,000 on NRWC and ERCC.

See the following cases in the Federal Court Cases which also challenge sec. 441b of the FECA. Martin Tractor Company v. FEC, AFL-CIO v. FEC, and California Medical Association v. FEC.

Campaign Financing - Corporate - Political Action Committee

Martin Tractor Company v. Federal Election Commission, No. 78-2080 (D.C. Cir. May 8, 1980). Certiorari denied U.S. Sup. Ct. 11/3/80 sub nom. National Chamber Alliance for Politics v. FEC (Doc. No. 80-349)

This consolidated suit was brought by Martin Tractor Company and the National Chamber Alliance for Politics. Both complaints center around the restrictions which sec. 441b of the Federal Elections Campaign Act (FECA), places on them. This section imposes restrictions upon the type, quantity and extent of "solicitation" which a Political Action Committee (PAC) may engage in with corporate employees not defined as executive or administrative personnel. Solicitation of a corporation's hourly employees is limited to twice a year, must be in writing and must be addressed to those employees at their residences.

The appellants in Martin Tractor would like to resume communicating with all of their employees in the same way they did before the Act was amended; i.e., communicate orally and in writing with all employees concerning the PAC and contributions to it, on and off the company premises and more than twice a year. The appellants in the National Chamber case do not define the form, content, method, place or frequency of communication but only allege a "desire to communicate with political action committees." Both appellants allege that sec. 441b violates their first and fifth amendment rights.

The suits were brought under 2 U.S.C. 437h, a provision of the FECA intended to facilitate judicial review of the constitutionality of the Act. Section 437h allows the Federal Election Commission, the national committee of any political party or any individual eligible to vote for President to bring an action to interpret the constitutionality of the FECA. The district court held that the appellants were not among the individuals eligible to seek review under sec. 437h. The court of appeals did not confront the issue of the scope of applicability of sec. 437h.

The court of appeals affirmed the lower court's dismissal of the complaints. The court ruled that the provisions of sec. 437h could not compel a court to decide a case if the case lacked "ripeness" for adjudication. The court stated that to establish a justiciable claim the appellants must allege 'such a personal stake in the outcome of the controversy as to assure... concrete adverseness....' Baker v. Carr, 369 U.S. 186, 204 (1962), and "must allege an actual injury or the certainty of future injury. 'A hypothetical threat is not enough.'" United Public Workers v. Mitchell, 330 U.S. 75, 90 (1947). The court noted that in this case the appellants have not so much as threatened a statutory violation; they have not communicated with the FEC concerning the activity which they would like to undertake, and the FEC has not taken action nor threatened to enforce the statute or its regulations against them.

The court agreed that the term "solicitation" is ambiguous in the Act and FEC regulations and that statutory ambiguity can often be chilling. However, the court determined that the nature and extent of the chill upon first amendment rights was very limited because 1) the advisory opinion (AO) mechanism written

into the FECA mitigates whatever chill may be induced by the statute and argues against constitutional adjudication (any person may seek an AO, they are binding in that reliance on an AO is a defense to criminal prosecution or civil suit, AO's must be issued within sixty days of the request for advice); and 2) there is an uncertain scope or nature of legal rights alleged to have been invaded (first amendment rights of corporations to communicate with their own employees may not be as strong or as extensive as their first amendment rights to communicate with the public at large. See NLRB v. Gissel Packing Co., 395 U.S. 575, 617 (1969)).

The court held that it was prudent for the court to require additional facts before passing upon the validity of an act of Congress. See United States v. UAW, 352 U.S. 567 (1957).

See Bread Political Action Committee v. Federal Elections Commission, 591 F.2d 29 (7th Cir. 1979), in the Federal Court Cases section of this book. In this case the court decided that judicial review under sec. 437h should not be confined to suits brought by the plaintiffs designated in the statute.

See the following cases in the Federal Court Cases which also challenge sec. 441b of the FECA. California Medical Association v. FEC, AFL-CIO v. FEC, and FEC v. National Right to Work Committee.

Campaign Financing - Disclosure Requirements

Common Cause v. National Archives and Records Service, No. 79-1637 (D.C. Cir. April 30, 1980)

Common Cause, seeking certain documents and memoranda which are stored at the National Archives and Records Service and which were compiled by the Watergate Special Prosecution Force (WSPF), filed suit in accordance with the Freedom of Information Act (FOIA), 5 U.S.C. sec. 552. Common Cause was attempting to reveal the identities of candidates for federal office to whom nineteen named corporations have admitted making or have been alleged to have made unlawful campaign contributions during the period 1968-73. The FOIA request filed by Common Cause was granted with respect to certain contributions of each of the corporations for the reason that the information had already been publicly disclosed through judicial proceedings or agency filings. Information with respect to other contributions was withheld because, in the opinion of the WSPF, disclosure "might subject the alleged recipients to embarrassment and public obloquy without the benefit of formal judicial proceedings." The district court agreed with WSPF and entered summary judgment and dismissed Common Cause's complaint.

The court of appeals vacated and remanded the district court decision. Although the court acknowleged good policy reasons for nondisclosure under 7(C) of the identities of persons investigated but never subsequently prosecuted for crimes, the court was not prepared to state this as the rule for every case. Section 7(C) of the FOIA is an exemption clause for law enforcement investigatory

records whose disclosure would constitute an "unwarranted invasion of personal privacy."

The court stated that some special circumstances might tip the balance in favor of disclosure. The court mentioned two of these potential areas: (1) federal candidates could be considered public figures and as such would have less right to privacy than ordinary citizens, and (2) the information sought about them concerns campaign contributions, contributions which were then and are now required by law to be reported publicly. The court cited Congressional News Syndicate v. United States Department of Justice, 438 F. Supp. 538 (D.D.C. 1977), which stated that "the Federal Corrupt Practices Act [the statutory predecessor of Federal Election Campaign Act] disclosure requirements strip contributors and recipients equally of whatever cloak of privacy their relationship would have had in the statute's absence." The court noted that this decision had never been appealed by the government.

The court stated that discovery can be controlled by the trial judge to avoid both undue prolongation of the case and premature disclosure of the protected material.

Campaign Financing - Political Action Committee

American Federation of Labor and Congress of Industrial Organizations v. Federal Election Commission, No. 78-1937 (D.C. Cir. April 1, 1980). Certiorari denied U.S.Sup.Ct. 11/10/80 sub nom. FEC v. AF of L-CIO (Doc. No. 80-368)

This case is an appeal by the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) from a district court order which assessed a civil penalty of $10,000 for violation of the Federal Election Campaign Act of 1971 (FECA). The alleged violation involved the transfer of funds between the COPE Education Fund and the Committee on Political Education-Political Contributions Committee (COPE-PCC).

The COPE Education Fund is financed by AFL-CIO general treasury money. It is used for non-partisan voter registration, get-out-the-vote drives and communications with union members. COPE-PCC is a sepatate segregated fund within the meaning of sec. 441b of th Act and is permitted to make direct contributions to candidates for federal elective office. Its money comes from the voluntary political contributions of AFL-CIO union members.

Between 1970 and 1977 COPE-PCC transferred money to the COPE Education Fund several times (COPE-PCC funds were idle between elections). On demand of COPE-PCC, the funds were transferred from the Education Fund back to COPE-PCC for its use. COPE-PCC never owed money to the Education Fund; the assistance was entirely one-way. These transfers were designated as loans but were interest-free. Complete records were kept and the transactions were reported to the Office of Federal Elections of the General Accounting Office (GAO) and later to the Federal Elections Commission (FEC).

In 1977, the FEC, which had succeeded to the GAO's authority, notified the AFL-CIO that sec. 441b of the Act permits transfers of funds from COPE-PCC to the COPE Education Fund but that no transfers back into COPE-PCC was allowed. COPE-PCC attempted to negotiate with the FEC so that a single transfer of $312,000 from the Education Fund to COPE-PCC could be made for the purpose of clearing the balance between the two funds. The FEC refused this proposed settlement. The FEC then brought an enforcement action in the district court to prevent this final transfer of funds and also seek a civil penalty against the AFL-CIO. The FEC concedes that any AFL-CIO wrongdoing was unintentional.

The district court ordered that a final transfer of $312,000 from the COPE Education Fund to COPE-PCC be made. The court also imposed a civil penalty of $10,000 against the AFL-CIO.

The court of appeals reversed the imposition of the civil penalty. The court held that sec. 437g(a)(7) of the Act requires that the violation be 'knowing and willful' before such a penalty is imposed. The court concluded that AFL-CIO's belief in the legitimacy of the inter-fund transfers was reasonable; during the GAO audit no comment was made about these routinely reported transfers and neither the Act nor any court decision had addressed the immediate issue. See United States v. Garber, 607 F.2d 92 (5th Cir. 1979), in which it was held that no one should be convicted when the meaning of the law is uncertain. The court rejected the FEC argument that Pipefitters Local No. 562 v. United States, 407 U.S. 385 (1972), provided specific notice that inter-fund transfers were prohibited by the Act.

See the following cases in the Federal Court Cases which also challenge sec. 441b of the FECA. Martin Tractor Company v. FEC, California Medical Association v. FEC, and FEC v. National Right to Work Committee.

Campaign Financing - Political Action Committees

Bread Political Action Committee v. Federal Elections Commission, 591 F.2d 29 (7th Cir. 1979)

Plaintiff trade associations and their political action committees brought suit seeking to challenge the constitutionality of various provisions of the Federal Elections Campaign Act. The issue on this appeal is whether these plaintiffs may invoke the expedited review provision under § 437h of the Act.

Plaintiffs originally filed their complaint in the district court for immediate certification of the constitutional questions presented. The district court held a hearing and rendered an oral decision denying the motion to certify. The court construed § 437h to restrict the availability of expedited review to the three types of plaintiffs listed in the first sentence of § 437h(a): "[t]he [Federal Election] Commission, the national committee of any political party, or any individual eligible to vote [in a Presidential election]." The district court held that, since "the plaintiffs in this action do not fall within the

groups specified in § 437h ..., they are not entitled to expedited review ..." The court of appeals, however, did not have such reservations about the standing of the plaintiffs and remanded the case to the district court for the taking of necessary evidence and for certification of the resulting constitutional questions. The court of appeals stated that limiting plaintiffs with standing to the three types listed in § 437h would effectively prevent challenges to many provisions of the Act, a result not in keeping with the finding by the court that the intent of subsection (a) of § 437h was to permit constitutional challenges to be brought against every part of the Act. Section 437g further supports the plaintiffs' position by providing for actions specifically to decide the constitutionality of the Act.

The court went on to say that Congress' purpose for naming the three types of plaintiffs in subsection (a) was to insure their standing to raise constitutional challenges to the Act. Congress believed that it was important that those plaintiffs, in addition to others with personal interest, should be allowed to test the constitutionality of the Act.

Campaign Financing - Political Action Committee

California Medical Association v. Federal Election Commission, No. 79-4426 (9th Cir. May 23, 1980). Petitioned for certiorari U.S. Sup. Ct. 6/12/80 (Doc. No. 79-1952)

The California Medical Association (CMA), an unincorporated association, and its political action committee, the California Medical Political Action Committee (CALPAC), appealed a district court order concerning the constitutionality of contribution limits which are imposed by the Federal Election Campaign Act (Act), 2 U.S.C. sec. 441a(a)(1)(C). The CMA and CALPAC contend that the $5,000 per year restriction on support of a political action committee by an unincorporated association violates their first amendment rights to speech and association both on its face and as applied to them. Appellants also claim that sec. 441b(b)(2)(c) constitutes invidious discrimination in violation of the fifth amendment. This section allows labor unions and corporations, but not other orgnizations, to pay for the administration and solicitation costs of their PACs.

The court of appeals, sitting en banc, upheld the constitutionality of the Act. The court states that to overturn the restriction on how CALPAC can collect money would be to grant associations a special privilege of unlimited and direct contribution ability, a privilege not extended to individual persons. The court noted that a person or an organization, such as CMA can contribute no more than $1,000 each year to any candidate. A political committee qualified as a multicandidate committee such as CALPAC may give a maximum of $5,000 per year to any one candidate. The court held that, if limits on payments to a political committee were erased, any association could give unlimited funds to a political committee. Donors could use the multicandidate committee as a vehicle for making $5,000 contributions to an unlimited number of candidates. The court held that to vest such power in political action committees would

be to create novel and potentially enormous opportunities for corruption and would distort the existing contribution limits which have been sustained in Buckley v. Valeo, 424 U.S. 1 (1976).

The court stated that the decision in Buckley stands for the "proposition that spending is entitled to the maximum protection when the speaker and the spender are one and the same... [b]y contrast, the donee of a contributor has the power to distort, alter, or transform the contributor's message." In Buckley the Supreme Court viewed campaign contributions as "symbolic acts showing support rather than as expository acts of advocacy...The articulation of ideas by a speaker is more central to political expression than is the symbolic support embodied in a contribution, which is essentially a proxy." The court stated that the "limit on payments to a multicandidate political committee does not intrude upon the right of associations except in a most minimal way...CMA and any other association may spend as much as it chooses to collect for political speech, including advocacy of a particular candidate's election. The limitation applies only to candidate contributions and payments to multicandidate political committees."

The court also upheld the constitutionality of FEC's interpretation of the Act which allows labor unions and corporations, but not other organizations, to pay for the administration and solicitation costs of their PACs. The court held that "it is not true a priori or from the face of the Act...that corporations or unions...can match in any degree the power of associations to influence federal elections."

The court noted that there was a fundamental distinction between the regulatory scheme applied to segregated funds maintained by corporations or unions and the operation of political committees funded by associations. Segregated funds can be maintained only for individuals in a narrowly defined class and solicited under severe restrictions. Corporations and unions are forbidden to make any expenditures or contributions to influence federal elections. The court stated that an association can spend unlimited amounts and may make unlimited solicitations to all persons for contributions to political committees. The court concluded that no constitutional discrimination or first amendment burden or injury can be demonstrated from the differential treatment.

Appellants brought this suit under 2 U.S.C. 437h, a provision which requires that "all questions of constitutionality of this act" be heard by a court of appeals sitting en banc. The court stated that, because various difficult questions can be raised about the meaning and constitutionality of the section's en banc requirement, it would be best to hear the case under Fed. R. App. P. 35.

See the following cases in the Federal Court Cases which also challenge sec. 441b of the FECA. Martin Tractor Company v. FEC, AFL-CIO v. FEC, and FEC v. National Right to Work Committee.

Campaign Financing - Political Action Committee

Common Cause v. Federal Election Commission, 489 F. Supp. 738 (D.D.C. 1980)

This suit instituted by Common Cause against the FEC charges that the American Medical Association (AMA) violated the contribution limitation outlined in the Federal Election Campaign Act (FECA). Common Cause also charges that the FEC failed to act in a timely manner on complaints filed with them concerning the AMA violations. Common Cause filed these administrative complaints in October 1976 and in June 1978. These complaints asserted that AMA's political action committee--the American Medical Political Action Committee (AMPAC) and the state medical political action committees (PACs) formed under the various state medical associations were a single political committee as defined by the FECA, 2 U.S.C. sec. 441a(a)(5). Common Cause claims that, because they are a single PAC, they are limited to a total contribution of $5,000 per candidate for federal elective office in each election cycle. The complaints filed by Common Cause listed sixty-nine violations in twenty-four states in the 1976 congressional election where the combined contributions of AMPAC and a state PAC to an individual candidate or committee exceeded the $5,000 limit.

The court discovered that in February 1977, between the filing of Common Cause's two complaints, the FEC expanded its investigation to all state medical associations and PACs. During the course of its investigation, the FEC mailed informal requests for information to each respondent, conducted over sixty depositions and collected approximately 60,000 pages of documents. The court noted that, because the FEC's efforts were resisted, it was compelled to file subpoena enforcement actions in the appropriate federal district court on at least nine separate occasions. They also issued numerous subpoenas which did not require judicial enforcement. In the fall of 1979, when the FEC found reasonable cause to believe that the Act had been violated, it entered separate conciliation agreements with AMPAC and several state PACs. The agreement provides that

> AMPAC will not make contributions to any candidate or political committee which, when aggregated with contributions to the same candidate or same political committee by any of the political committees of the recognized medical associations...exceed the contribution limitation of 2 U.S.C. § 441a(a)(2).

AMPAC has also reported all of the state political committees in its statement of organization filed with the FEC. The state PACS have agreed not to aggregate political contributions with AMPAC in excess of $5,000 and to report its relationship with AMPAC in its statement of organization.

The court stated that, since the FEC has entered conciliation agreements with AMPAC and a majority of the state PACs cited by Common Cause, it has taken final action in most of the violations complained of. The court supported the FEC position that the 90 day provision (now 120 days) in the FECA which authorizes judicial review is jurisdictional, giving the court power after

such time to decide whether the agency's failure to act is contrary to law — it does not require that the final action be taken within that time.

The court also stated that the question of whether AMPAC and the state medical PACs are a single committee could not be resolved summarily but, instead, is a factual question requiring proof. See Walther v. FEC, 438 F.Supp. 1235 (D.D.C. 1979). Though the court noted that the "matter has moved at an exceedingly slow pace," it stated that, because executed conciliation agreements with most of the respondents had been presented by the FEC and because agreements with the remaining state PACs are anticipated shortly, the investigation was not contrary to law.

Campaign Financing - Public Financing

Committee to Elect Lyndon La Rouche v. Federal Election Commission, 613 F.2d 834 (D.C. Cir. 1979). Certiorari denied U.S. Sup. Ct. 2/19/80 (Doc. No. 79-800 & 79-801)

Plaintiff, a 1976 candidate for the Presidential nomination of the United States Labor Party, appealed the decision of the Federal Election Commission (Commission) of withholding from the plaintiff certification to receive primary matching funds under the Presidential Primary Matching Payment Account Act, 26 U.S.C. sections 9031-9042 (1976), on the ground that plaintiff had not established his eligibility under the fundraising threshold of the Act. Plaintiff contended that the legal standards and certification procedures invoked by the Commission in making that determination were in contravention of section 9033 (b) and section 9036(a) of the Act. Plaintiff also contended that, if the Act were interpreted as providing for a lengthy and detailed certification process, it would violate the first amendment as a prior restraint on plaintiff's right to free speech because of the important role that campaign funds play in the advocacy of political beliefs prior to an election.

The court affirmed the Commission's decision. The court agreed with the Commission that a candidate seeking certification is required to submit detailed documentation to establish that the threshold amount has been raised in compliance with section 9033 ($5,000 in contributions from residents of each of at least 20 states not exceeding in the aggregate $250 from any one individual).

The court determined that the Commission's role under section 9036(a) was to review the submission to determine whether it adequately documented the candidate's compliance with the fundraising threshold. The court noted that that determination was limited (with one exception) to deciding on the case of the candidate's submission whether the reported contributions are in fact "contributions" as defined by the Act (§9034) and whether those contributions exceed the threshold amount (§9033).

The court added that, if the Commission decides that these conditions have not been met, the candidate must be so notified and allowed to resubmit his fund raising documentation. If the determination is favorable and if the

candidate has met the other eligibility requirements, the court held, the Commission is required to certify the candidate's eligibility no later than 10 days after that determination has been made. The court noted that the one exception to this course of action would be if the submitted documents contained "patent irregularities". Under those circumstances the Commission is empowered, as part of the certification process, to conduct a properly circumscribed investigation including an audit of the candidate's records and field interviews of the contributions to his campaign.

The court stated that, even though the Commission acted beyond the scope of its powers in the timing of its authorization of a staff audit of the records of the Committee to Elect La Rouche (CTEL), this error was nonprejudicial. (See Administrative Procedure act §10(e), 5 U.S.C. §706 (1976)). The court noted that, if the Commission had followed the proper course of awaiting further submission from the plaintiff, the documents would have contained the patent irregularities that would have warranted an inquiry beyond the face of the threshold submission. The court approved of the Commission's authorization of field interviews of CTEL contributions once it was confronted with patent irregularities concerning those contributions. The court determined that it was the obligation of the Commission to refuse to certify the candidate when evidence revealed that the plaintiff had not complied with the Act.

The court concluded that the certification process outlined above was constitutional. The court cited Buckley v. Valeo, 242 U.S. 1 (1976), where the Supreme Court determined that it was not Congress' interest to fund hopeless candidates with large sums of public money and that Congress may legitimately require some preliminary showing of a significant modicum of support from the electorate.

Candidates - Ballot Access

Faulkner v. Sadowski, 486 F. Supp. 1261 (S.D.N.Y. 1980)

Plaintiffs, seeking to appear as candidates for Assembly District Leaders on September 11, 1979, primary election ballot, brought suit alleging that the New York City Board of Elections violated 42 U.S.C. sec. 1983, thus depriving candidates of the ability to be placed on the ballot. Plaintiffs sought summary judgment seeking injunctive relief in the form of a new primary election.

Plaintiffs maintained that they were deprived of their right to run for election because the board of elections misled them when determining the amount of valid signatures needed on the petitions. Sec. 6-136(2) of the New York Election Law requires that a petition designating a candidate for party nomination be signed by not less than five percent of the enrolled voters of the party residing within the political unit in which the office or position is to be voted. Plaintiffs filed designating petitions containing 672 signatures and it was found that the five percent minimum was attained. However, upon

reexamination, the decision was reversed and petitions were declared invalid. Application was made to the state trial court to modify the findings but was refused. Appeal was then made to the court of appeals.

The court denied plaintiffs' motions for summary judgment and held that material fact issues remained as to what the signature requirements should have been and whether the candidates were bound by the signature requirement that they stipulated.

Candidates - Independent - Ballot Access

Anderson v. Babb, No. 80-561-CIV-5 (E.D. N.C. August 21, 1980)

Plaintiffs, a candidate for President of the U.S. and Independent for Anderson Party of North Carolina and others, filed suit against the North Carolina State Board of Elections for failing to include John Anderson's name on the general election ballot. Plaintiffs seek to enjoin the board from enforcing or applying the provisions of North Carolina General Statutes (N.C.G.S.) sec. 163.213.6. This section provides that the board must notify persons who have been nominated by them or by petition that upon their written requests their names will be printed as candidates of specified political parties on the North Carolina presidential preference primary ballot. This section also stipulates that a candidate who participates in the primary of a particular party will have his name placed on the general election ballot only as a nominee of that political party.

On February 12, Anderson notified the board that he accepted the nomination as a candidate for the Republican Presidential Primary to be held on May 6. On April 24, plaintiff Anderson publicly announced his intention to withdraw as a candidate for the Republican Presidential nomination and to pursue an independent candidacy for that office. His letter to the Board of Elections requesting withdrawal of his name from the primary ballot was not received until after the ballots had already been printed and distributed. Petitions, filed on behalf of Anderson to organize a new political party, were submitted to the board. Following a public hearing, the board concluded that Anderson did participate in the presidential preference primary within the meaning of G.S. 163-213.6. The board also concluded that, because of this participation, he was not qualified to have his name placed upon the general election ballot as a candidate for President of the "Independents for Anderson Party of North Carolina."

Plaintiffs maintain that the board erroneously construed the statute and that, as applied, N.C.G.S. 163-213.6 unconstitutionally interferes with the fundamental rights of citizens to associate to advance political beliefs and to vote effectively.

The court held that, on the basis of the undisputed facts, Anderson did not participate in the primary election of May 6 and that he is therefore entitled to have his name placed on the ballot for the November general election as the

Presidential candidate of the political party "Independents for Anderson Party of North Carolina."

The court held that the legislature intended that the meaning of a candidate "participating" in a primary refers to the election itself and not to the entire period prior to the election during which candidates are nominated and conduct their campaigns. The court concluded that, since the controversy could be determined by the proper construction of the statute in question, the question of its constitutionality should not be reached. See Rosenberg v. Fleuti, 374 U.S. 449 (1963), which stated that courts are under a duty not to consider the constitutionality of the statute if a decision can be placed on other grounds.

Candidates - Independent - Filing Requirement

Anderson v. Celebrezze, No. C-2-80-400 (S.D. Ohio July 18, 1980). Certiorari denied U.S. Sup. Ct. 9/18/80 sub nom. Celebrezze v. Anderson (Doc. No. 80-182)

Plaintiff, an independent candidate for the office of President of the U.S., filed this lawsuit seeking injunctive relief to place his name on the ballot as well as a declaration that Ohio Revised Code (R.C.) 3513.257 violates his right to equal protection under the fourteenth amendment and right to political association under the first and fourteenth amendments. R.C. 3513.257 requires an independent candidate to file his or her nomination papers seventy-five days before the primary election in June (in this case by March 20, 1980) in order that he or she may be included on the November general election ballot. Plaintiff claims that the deadline unfairly discriminates against independent candidates with respect to the time when they, as compared with candidates of both major and minor parties, are required to qualify as candidates for the general elections.

The court held that R.C. 3513.257 imposes on plaintiffs' fundamental rights a substantial burden which is not justified by any compelling state interest. The court concluded that the statute is unconstitutional and that the defendant must accept plaintiff's nomination petition.

The court held that the law clearly burdens plaintiff's rights of expression and association secured by the first amendment. It implicates an individual's "important interest in the continued availability of political opportunity," Lubin v. Panish, 415 U.S. 709 (1974), and his right "to associate for the advancement of political beliefs." Williams v. Rhodes, 393 U.S. 23 (1968).

The court noted that, while the plaintiff may still "participate in the election by virtue of Ohio's write-in procedure...a write-in candidacy is an inadequate alternative to ballot placement." See Lubin v. Panish, supra. The court noted that the Supreme Court recognized in Illinois Board v. Socialist Workers Party, 440 U.S. 173 (1979), that "an election campaign is a means of disseminating ideas as well as attaining political office.... Overbroad restrictions on ballot access jeopardize this form of political expression."

The court also recognized that the individual's right to a place on the ballot is intertwined with the fundamental rights of the voters to cast their vote for the candidate of their choice. The court was concerned that the filing law limited not only Ohio voters but also voters in other states. This is true because the goal of voters in a presidential election is to amass enough electoral votes to elect their candidate. Ohio filing deadline laws remove the sixth largest slate of electors from plaintiff's reach (Ohio has 25 electoral votes). The court noted that national opinion polls reflect that the plaintiff has support from between 23% (nationally) and 44% (New York) of the electorate. His campaign contributions indicate that support for his independent candidacy appears to be substantial and the number of persons in Ohio and elsewhere whose fundamental rights are implicated by the Ohio deadline is similarly substantial.

The court rejected the defendant's argument that the statute preserves the state's political stability. The court held that Part I of Storer v. Brown, 415 U.S. 724 (1974), which upheld the State of California's right to maintain the integrity of the various routes to the ballot, did not apply in Ohio because the statute in question was not intended to be a "disaffiliation" provision. The California statute prohibited a candidate from running as an independent if he either voted in the immediately preceding primary election or had a registerd affiliation with a qualified political party within one year prior to the immediately preceding primary. The court stated that, although the California statute had been upheld, it applies its disaffiliation laws to statewide elections and not to a presidential candidate. The court pointed to the disaffiliation statute that Ohio does have, commonly known as the "sore loser" provision. This state did not apply to the plaintiff because he withdrew from the Ohio primary in time to have his name removed from the ballot.

Candidates - Independent - Filing Requirement

Anderson v. Hooper, No. 80-432-M (D. N.M. July 8, 1980)

Plaintiff, an independent candidate for the office of President of the U.S., claims that New Mexico Stat. Ann § 1-8-52 (which specifies that declarations of independent candidacy and nominating petitions must be filed by March 4, 1980) violates the equal protection clause of the fourteenth amendment by creating an arbitrary distinction between partisan and independent candidates and by creating an arbitrary distinction between independent candidates who decide upon their candidacy prior to March 4 and those who decide on independent candidacies after that date. Plaintiff contends that this statute deprives him of an opportunity to associate for the advancement of political beliefs in violation of first and fourteenth amendment rights. Plaintiff also contends that the statute violates the supremacy clause of the Constitution because it is inconsistent with federal laws which govern how presidential elections should be conducted.

The court granted plaintiff a preliminary injunction. The court enjoined the secretary of state from refusing to accept plaintiff's declaration of candidacy and nominating petitions and from refusing to certify him as an independent candidate for the office of President on the November general election ballot. The court held that a preliminary injunction was necessary because, if plaintiff's name did not appear on the general election ballot, there would be no adequate remedy at law to compensate him for this injury if he should prevail in the final judgment. The court held that this injury is not outweighed by any possibility of harm to the defendent or any public interest.

The court held that, although states have a number of interests which would justify limiting access to the ballot, no compelling state interest is furthered by having an extraordinarily early deadline for presidential independent candidates and a September deadline for partisan presidential candidates. The court, citing Williams v. Rhodes, 393 U.S. 23 (1968), stated that the right of individuals to associate for the advancement of political beliefs ranks among this country's most precious freedoms.

The court held that the two statutes, commonly referred to as the "sore loser" statutes, did not apply to the plaintiff. The court held that secs. 1-8-19 and 1-10-7 only prevent unsuccessful primary candidates from appearing on the next general election ballot under any party name that was different from the name he or she ran under in the primary. Plaintiff wanted to run as an independent candidate and would be a candidate without party affiliation.

Candidates - Independent - Filing Requirement

Anderson v. Mills, Civ. No. 80-18, (E.D. Ky. August 14, 1980)

In this consolidated case (joined with Greaves v. Mills, Civ. No. 80-17), the independent presidential candidate plaintiffs challenged the constitutionality of Kentucky Revised Statute (KRS) 118.365(3) and 118.345. KRS 118.365(3) provides that petitions and certificates of nomination, when required to be filed must be filed not less than fifty-five days before the primary election. KRS 118.345, the "sore loser" provision, prohibits a candidate who was defeated for the nomination for any office in a primary election from having his or her name included on the ballot in the succeeding regular election.

Congressman Anderson originally was a candidate for the Republican nomination for President. Before the 27 May Kentucky Republican primary, he anounced his intention to withdraw as a Republican candidate and to run as an independent. He attempted to have his name removed from the primary ballot, but the secretary of state refused because his withdrawal was untimely. See Anderson v. Mills, Civ. No. 80-18 (E.D. Ky. June 10, 1980). Subsequently, Anderson was defeated in that primary. On the day of the primary, supporters of Anderson presented a petition for his name to be placed on the November ballot. The secretary of state rejected it as being untimely. She maintained that the petitions

had to be filed on or before April 2, in accordance with KRS 118.365(3), and that Anderson was disqualified under the "sore loser" law because he had been defeated in the primary election.

The court ordered the secretary of state to place John Anderson's name on the November general election ballot. The court noted that, under the rule from Railroad Commission v. Pullman Co., 312 U.S. 496 (1941), this court should, if possible, abstain from deciding the case until a state court is allowed to pass on the issue of state law. However, since there were fewer than 90 days until until the general election, the court decided not to abstain but to decide the case on other than constitutional grounds. See Siler v. L. & N. R.R., 213 U.S. 175 (1909).

The court did not agree with defendants' arguments that KRS 118.365(3) applies to presidential candidates as well as to other candidates. The court noted that, if the legislature intended that result, it could have easily omitted the word "petitions" in KRS 118.365.(4). KRS 118.365(4) provides that petitions and certificates of momination for electors of President and Vice President must be filed at least fifty-five days before the date fixed by law for the election of such electors. The court concluded that subsection (4) applies to presidential candidates; thus, petitions which are otherwise legally sufficient must be accepted by the secretary of state when filed not less than fifty-five days before the general election.

The court held that the "sore loser" statute does not apply to presidential candidates because the candidate is not defeated in Kentucky in the primary election; that defeat only comes at the convention. To decide otherwise might preclude the ultimate nominee at the convention from appearing on the general election ballot if he or she lost the Kentucky primary election. The court noted that the "sore loser" law was in effect before the presidential primary election law and that there is no legislative history to demonstrate that presidential candidates were included under KRS 118.345.

Candidates - Independent - Filing Requirement

Anderson v. Morris, Y-80-1632, (D. Md. August 6, 1980), aff'd, No. 80-1534 (4th Cir. September 17, 1980)

John B. Anderson, Independent candidate for President of the United States, filed suit against Maryland election officials, challenging the constitutionality of state laws which prevented him from being on the Maryland general election ballot.

On July 8, 1980, plaintiff's supporters submitted 89,019 signatures of Maryland registered voters to the local election boards to put his name on the general election ballot as an Independent candidate for President. However, art. 33, sec. 4A-3 of the Annotated Code of Maryland states that one-third of the signatures must be submitted by March 3, 1980. A certificate of candidacy must also be filed by that date. The defendant would not place Anderson's name on

the general ballot because these deadlines were not met. The issue before the court is whether this filing deadline is unconstitutional.

The court held that there is no compelling state interest which would justify the March 3 filing deadline for Independent candidates for President. The early deadline for filing a certificate of candidacy imposed on Independent candidates for President is unconstitutional because it requires Independent candidates to file candidacies months before the parties designate their nominees, and, because the early deadline is unconstitutional, the early deadline for filing a portion of the petition is unconstitutional.

Candidates - Independent - Filing Requirement

Anderson v. Quinn, No. 80-0176 P (D. Maine August 11, 1980)

Plaintiff, an independent candidate for the office of President of the U.S., challenges the constitutionality of a Maine statute, 21 Maine Rev. Stat. Ann. sec. 494(9), which requires an independent candidate for President to file a nominating petition with the secretary of state by April 1, 1980 — 181 days prior to the date when political parties are required to certify their nominees for presidential electors and 217 days before the November general election. The plaintiff and his supporters charge that the filing deadline impermissibly burdens their constitutional rights of association as guaranteed by the first and fourteenth amendments and denies equal protection as guaranteed by the fourteenth amendment.

The court granted the motion for summary judgment to the plaintiff. The court declared that the deadline for filing nomination petitions and consent forms on behalf of independent candidates is unconstitutional as applied to the independent candidacy of the plaintiff and permanently enjoined the defendant from enforcing the deadline.

The court based this decision on the teachings of Illinois State Board of Elections v. Socialist Workers Party, 440, U.S. 173 (1979) (quoting Williams v. Rhodes, 393 U.S. 23 (1968)), which has firmly established that '[r]estrictions on access to the ballot burden two distinct and fundamental rights, the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion to cast their votes effectively.' The Supreme Court has also repeatedly held that substantial burdens on rights are invalid under the first and fourteenth amendments unless essential to serve a compelling state interest. Illinois State Board of Elections v. Socialist Workers Party, supra; American Party of Texas v. White, 415 U.S. 767 (1974); Storer v. Brown, 415 U.S. 724 (1974).

The court held that the state has failed to show any compelling interest or even a rational justification for the filing deadline. The state does not contend that the plaintiff is a frivolous candidate, nor does the state assert that an April 1 filing deadline is required to provide adequate time to verify petitions and print ballots. The court characterized as bordering on the

frivolous the state claim that all candidates within its power to regulate are treated equally and that party presidential candidate selection is not within its power to regulate because of the decision in Cousins v. Wigoda, 419 U.S. 477 (1975). The state also argued that the deadline acts as a disaffiliation requirement (preventing persons to run as independents after they fail to obtain a party nomination). The court answered that the filing deadline was not intended to serve as a disaffiliation requirement and that it did not serve that purpose in practice.

Candidates - Non Party Member Endorsement

Mrazek v. Suffolk County Board of Elections, 471 F.Supp. 412 (E.D.N.Y. 1979)

Plaintiffs, Democratic party candidates for state senator, state assemblyman and two Conservative party members, challenged the constitutionality of the Suffolk County Conservative party's method for designating senate and assembly candidates who were enrolled Republicans and Republican party candidates. Plaintiffs argued that the principle of "one person, one vote" requires that the decision for the eligibility of a non-party member to run as a party candidate be made by a committee whose members have been elected by party members within the district from which the candidate will seek election. It was stated that, because of present methods of election on the committee, it cannot meet this requirement.

As stated in secs. 6-120(3) and 6-120(12)(2) of the New York Election Law, a non-party member may be eligible to run as a party candidate if the candidate is authorized by a majority vote, provided a quorum is present, of a committee of the party. Also, because the process by which candidates secure a place on the ballot is an integral part of public elections, it must comport with the one person, one vote principle. See Seergy v. Kings County Republican County Committee, 459 F.2d 308, 314 (2d Cir. 1972). The district court concluded that the conservative party's method for designating senate and assembly candidates is not unconstitutional.

Candidates - Qualification - Judicial Office

Bullock v. State of Minnesota, 611 F.2d 258 (8th Cir. 1979)

Plaintiffs appealed the dismissal of their civil rights suit against the State of Minnesota and several of its executive officers, claiming that, because the secretary of state refused to file the non-attorney plaintiff's papers for the office of Supreme Court Justice pursuant to a Minnesota constitutional provision restricting candidacy to "individuals admitted or entitled to be admitted to the practice of law in Minnesota," M.S.A. Const. art. 6, sec. 5, violates the plaintiffs civil rights.

Referring to Antonio v. Kirkpatrick, 579 F.2d 1147 (8th Cir. 1978), and Bullock v. Carter, 405 U.S. 134 (1978), the court of appeals held that the right to

regulate elections and prescribe qualifications for statewide political offices is reserved to the state under the tenth amendment of the Constitution.

The equal protection clause of the United States Constitution does not prohibit a state legislature from adopting more rigorous standards for ensuring excellence in the judiciary than for other elective offices. Therefore, the provision in the Minnesota state constitution restricting candidacy to "individuals admitted to the practice of law in Minnesota" does not violate the equal protection clause.

Corrupt Practices - Extortion of Political Funds

United States v. Cerilli, 603 F.2d 415 (3rd Cir. 1979). Certiorari denied U.S. Sup. Ct. 1/21/80 (Doc. No. 79-248)

Appellants, a district superintendent and three assistant superintendents of the Pennsylvania Department of Transportation, had been convicted by the district court of conspiring to violate the Hobbs Act and of substantive violations of that Act. The Hobbs Act prohibits obstructing, delaying or affecting commerce by attempting, conspiring or committing robbery or extortion. The lower court conviction was based on evidence that, prior to granting approval of leases for road repair and snow removal equipment, the appellants had required that payments be made by the equipment owners to the state employees. Appellants contended in part that the payments they obtained were political contributions and that, since the Hobbs Act defines extortion as the 'wrongful use of actual or threatened force, violence or fear,' if the force, violence or fear is used for a lawful purpose (the solicitation of political contributions is not only lawful, but is protected by the first amendment), the use is not wrongful and extortion is not committed.

The court affirmed the conviction stating that, "although the solicitation of political contributions is not inherently 'wrongful,' the solicitations here were 'wrongful' in that neither the appellants nor any political committee had a 'lawful claim' to those contributions." The court noted that it is well-established that a person may violate the Hobbs Act without himself receiving the benefits of his coercive actions. See U.S. v. Green, 350 U.S. 415 (1956). The court also cited U.S. v. Homer, 545 F.2d 864 (3rd Cr. 1976), cert. denied, 431 U.S. 954 (1977), which involved the conviction of a state legislator under the Hobbs Act and which stated that evidence that the defendant delivered the money he had extorted to the local party treasurer was not probative of the extortion charge and was therefore properly excluded.

Corrupt Practices - Fraudulent Registration

United States v. Cianciulli, 482 F.Supp. 585 (E.D. Penn. 1979)

The court was presented with several post-trial motions of defendants who were convicted of violations of the Voting Rights Act, 42 U.S.C. secs. 1973i and

1973i(c), which provide that it is a criminal offense to conspire to encourage false registration or to give false information for the purpose of establishing eligibility to register to vote and 18 U.S.C. sec. 241, which provides that it is a crime to conspire to injure citizens in the exercise of their constitutional rights. It is important to this analysis to note that sec. 1973i(c) prohibits both false registration and illegal voting.

The case covered a pattern of conspiratorial and individual activities involving 25 defendants and approximately 15 unindicted actors. These events took place over a three year period beginning in 1975. The principal beneficiary of the registration fraud was defendant Cianciulli, who at the time of the indictment was a Pennsylvania state representative.

Defendants claimed, in one of the post-trial motions, that the false voter registration which occured in 1975 was not within the jurisdiction of the Voting Rights Act of 1965 because there was not a federal election in that year. Defendants relied upon the language found in sec. 1973i(c) that, "this provision shall be applicable only to general, special, or primary elections held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, [Member of Congress],...."

The court held that false registration could be the basis of a violation under the Act. The court determined that the proviso in sec. 1973i(c) did not apply to the elements which dealt with registration. Congressional intent for including the proviso was that some Members had serious questions as to whether Congress had the power to insure fair election procedures in state and local elections except to insure the guarantees under the fourteenth and fifteenth amendments. Congressional debates revealed that the bill as amended was meant to prohibit false registration.

The court then reviewed Pennsylvania registration law and applied the proviso in sec. 1973i(c) to the facts in this case in the light of the legislative goals. The court found that registration to vote, automatically qualified the registrant to vote in any election for a two-year period, unless there is a change of address. Furthermore, a single registration entitled the registrant to vote in local, state and federal election without the need for separate registrations for each election. The court stated that, "a registrant does not register for an election but rather secures a period of eligibility to vote in any election during that period." The court concluded that, "any false registration can be the basis of a violation of sec. 1973i(c) because it creates an eligibility to vote in a federal election. This is true whether or not that registration occurs in the same year as a federal election.

Corrupt Practices - Misuse of Public Funds

Winpisinger v. Watson, No. 80-1160 (D.C. Cir. April 10, 1980). Certiorari denied 4/28/80 U.S. Sup. Ct. (Doc. No. 79-1636).

Plaintiffs, seven voters and supporters of the Presidential campaign efforts of Senator Kennedy, filed this action alleging that defendants, seven Cabinet officers and seven Presidential assistants misused federal funds and abused federal power and thereby diminished the value of their efforts to promote Senator Kennedy's candidacy. Plaintiffs contended that defendants have used federal funds for the campaign travel salaries of various administration officials; they have conditioned public employment of high level federal employees on their support for the President, and they used federal grants and loans to states and municipalities to coerce political support. As supporters of Senator Kennedy, they charge that the challenged actions violate their first amendment right to 'free expression and free association in the electoral process in support of their preferred candidates.' As voters, they argue that these practices are alleged to 'diminish, dilute and nullify plaintiffs' votes, plaintiffs' lawful contributions of money, and their other efforts to nominate the candidates of their choice.' The district court held that the plaintiffs lacked standing and dismissed the complaint.

The court of appeals affirmed the dismissal on the basis of lack of standing and prudential concerns. The court agreed with the district court's holding that the plaintiffs failed to demonstrate standing because they failed to allege a 'distinct and palpable injury' to themselves quoting Warth v. Seldin, 422 U.S. 490 (1975), "which is direct and concrete, and not abstract, remote or speculative, citing O'Shea v. Littleton, 414 U.S. 488 (1974)." The court also agreed with the lower court that plaintiffs must establish an injury 'that fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the Court,' Simon v. Eastern Kentucky Welfare Rights Org., 426 U.S. 26 (1975). The lower court had also established that the appellants' allegations did not bring them within the Supreme Court's reapportionment cases, a series of opinions beginning with Baker v. Carr, 369 U.S. 186 (1961).

In addition, the court of appeals held that prudential barriers prevented standing in this case because the court's judgment, whether shaped as declaratory relief or injunctive relief or both, would have to interject itself into practically every facet of the Executive Branch of the federal government, on a continuing basis for the purpose of appraising whether considerations other than pure public service motivated the performance of official duties. See Public Citizen, Inc. v. Simon, 539 F.2d 211, (D.C. Cir. 1976), and Schlesinger v. Reservists to Stop the War, 418 U.S. 208 (1973).

Political Parties - Executive Committee

Wymbs v. Republican State Executive Committee of Florida, No. TCA 80-0734, (N.D. Fla. June 20, 1980)

Plaintiffs, three members of the Republican State Executive Committee of Florida, claim that the methods used by the Republican Party to select members of the Executive Committee violate their fourteenth amendment equal protection rights. Florida law provides that each county in the state, regardless of the size of its registered Republican population, will elect one man and one woman to a four-year term to serve on the Executive Committee. Plaintiffs also challenge on the same grounds the Republican Party's method of selecting delegates to their national convention. Delegates are selected by procedures either stipulated by law or selected by the party as one of the alternative methods suggested in Florida Statutes. In Florida, registered Republicans select fifty-one delegates and fifty-one delegate alternates. Three delegates are chosen from each of fifteen congressional districts and six at-large delegates are elected by the State Committee Board. The candidate receiving the highest number of votes in a congressional district receives all the delegate votes from that district (winner takes all). Each delegate or delegate alternate must support the candidate whom he was selected to support until the candidate is nominated or receives less than 35% of the votes for nomination.

The court held that the mehods used to select the Republican Executive Committee did not violate equal protection. However, the court did declare that the method used for selecting delegates to the Republican National Convention violated the equal protection clause of the fourteenth amendment.

The court held that, because the composition of the Executive Committee of the Republican Party of Florida is an issue that is both private and political in nature, the questions raised cannot be decided by a court. See Baker v. Carr, 369 U.S. 186 (1962). The court held that the method of election and the composition of the Executive Committee is not governmental in nature. The activities of the Committee (election of members to the Republican National Committee and the selection of delegates to the Republican National Convention) do not require a high degree of equal protection. See Ripon Society v. National Republican Party, 525 F.2d 580 (D.C. Cir. 1975), cert. den. 424 U.S. 933 (1976).

The court stated that plaintiffs have shown that Florida's system of allocating delegates to the Republican Party's national convention results in disparity of voting strengths among the fifteen Congressional districts (Although the number of registered Republicans varies significantly between Congressional districts, each district is allocated three delegates.). The inequality of voting strength increases when the delegates cast votes at the Republican Convention. The candidate receiving the highest number of votes in each district receives the vote of all three delegates from that district. The court stated that the Supreme Court has determined that constitutionally granted voting rights "must be recognized in any preliminary election that in fact determines the true weight a vote will have." Gray v. Sanders, 372 U.S. 368 (1963). The court also

determined that the disparity of Florida's system impacts on the voting rights of a clearly identifiable class of persons -- registered Republicans in the State of Florida.

Primary Elections - Ballot Access

Kay v. Austin, 621 F.2d 809 (6th Cir. 1980)

Appellant, a candidate for President of the United States, appealed a decision by the district court which refused to order his name placed on the presidential primary ballot. Appellant alleged in the district court that he had been denied his constitutional rights when the Michigan Secretary of State refused to place his name on the ballot as a candidate for the Democratic presidential nomination in conformance with Michigan Compiled Laws Annotated sec. 168.614. This section provides that the secretary of state must issue a list of the individuals generally advocated by the national news media to be potential presidential candidates for each party's nomination by the political parties for which a presidential primary election will be held. Appellant had sent the secretary of state an affidavit stating that he had traveled into thirty states in pursuit of the Democratic nomination and had been interviewed by "over 540 members of the news media, including 257 members of the written news media, 141 radio stations and 142 TV stations." The district court maintained that the appellant lacked standing because he failed to utilize the other routes providing access to the ballott, such as petitions.

In the court of appeals, appellant contended that he had met the requirements of sec. 168.614 but was discriminated against by the secretary of state. Alternatively he asked that the statute be found unconstitutional as void for vagueness for failing to define the words "potential," "generally advocated," "news," and "media." He also contended that the statute represented an improper delegation of authority by the legislature to the secretary of state by its failure to set policies and standards.

The court of appeals affirmed but held that the district court erred in holding that the existence of alternate means of achieving a place on the primary ballot and the failure to pursue those alternatives deprived the appellant of standing. The court stated that "when a candidate had followed a procedure set up by the state and is then denied a right as a result, ... a real injury arises causing a justiciable cause of action. Cf. Griffin v. Burns, 570 F.2d 1065 (1st Cir. 1978)."

The court of appeals stated that all of the contested phrases of sec. 168.614 are capable of narrow and reasonable applications, which the secretary of state appears to have given them. Under this section, the election division places names on the ballot in three ways: 1) analyzes the national news media; 2) supplements that information with data furnished by the Federal Election Commission on individuals receiving federal matching funds; and 3) follows the results of primaries in other states to see which candidates receive delegates.

Finally, the court determined that appellant was not entitled to equitable relief as a result of laches. The court stated that any claims against state procedures must be pressed expeditiously (appellant waited until nearly two weeks after he knew the choice of the candidates would be made and further delayed eleven days before filing suit). As time passes, the state's interest in proceeding with the election increases in importance as resources are committed; the candidate's claim to be a serious candidate who has received a serious injury becomes less credible by his having slept on his rights.

Qualifications To Vote - Convicts

Tate v. Collins, No. 80-2381-M (W.D. Tenn. August 27, 1980)

Plaintiff, a prisoner in a county workhouse who was convicted of a non-infamous crime, brought action seeking declaratory and injunctive relief which would allow him and others similarly situated to exercise their freedom to vote in Tennessee elections. Plaintiff contends that he and others are denied the fundamental right to vote because no method of voting is provided for them. Plaintiff contends that the failure of the state to make provisions for imprisoned persons to exercise their right to vote is violative of the equal protection clause of the fourteenth amendment inasmuch as qualified voters are prevented from execising their franchise in a wholly arbitrary manner.

The court, citing Richardson v. Ramirez, 418 U.S. 24 (1974), noted that a state may constitutionally exclude one or all convicted felons from the franchise. The State of Tennessee in art. I, sec. 5 of the Tennessee Constitution grants the right of suffrage to all persons, "except upon conviction by a jury of some infamous crime."

The court noted the the statutory provisions governing absentee voting in Tennessee essentially provide that registered voters may vote by absentee measures if they are to be either outside the county or state on election day or if they cannot appear at the designated polling place because of the observance of a religious holiday. However, this requirement is "riddled with exceptions." For example, a full-time student or full-time resident of any licensed nursing home is excepted from this provision as well as a person who has attained the age of 65 years. The privilege of absentee vote by either mail or personal appearance is afforded to jurors, candidates for office, persons possessed of a valid special chauffer's license, and members or employees of the election commission. The election provisions governing absentee voting do, however, expressly prohibit incarcerated persons from utilizing the absentee ballot.

The court found that plaintiff and the members of his class must be afforded some method by which to vote. The court's decision was controlled by the opinion of the U.S. Supreme Court in O'Brien v. Skinner, 414 U.S. 524 (1974), in which the Court found that New York Statutes discriminated between categories of qualified voters in a way that is wholly arbitrary and, therefore, denied the equal protection of the law guaranteed by the fourteenth amendment.

The court held that the Tennessee statutory provisions governing absentee voting deny plaintiffs the equal protection of the laws guaranteed by the fourteenth amendment. The court decided that voting by absentee ballot would be the most feasible method of protecting these rights and ordered that a permanent injunction be issued prohibiting defendants from failing to provide plaintiff and the members of the class (persons who will be incarcerated, pending trial or after conviction, on election day, who have not been convicted of an infamous crime) with absentee ballots.

Qualifications to Vote - Disfranchising Statute

Allen v. Ellisor, 477 F.Supp. 321 (D.S.C. 1979)

A class action suit was brought under sec. 7-5-120 (Provisio)(5)(b) of the South Carolina Code seeking declaration that the statute which disenfranchised persons convicted of specified crimes was unconstitutional in that it deprived the plaintiff, who had been convicted of forgery, of the right to vote.

The court found that the crimes listed in the statute in question discriminated among persons convicted of crimes of the same magnitude. Beating one's wife disenfranchises; beating a stranger does not. Breaking into a house disenfranchises; breaking into a car does not. Inequity also results from the inclusion of lessor offenses as fornication and wife beating, while excluding serious crimes like manslaughter, kidnapping and all manner of conspiracies. The decision of Skinner v. Oklahoma, 316 U.S. 535 (1942), shows that the states are not free to choose different classifications at random for different purposes without showing a rational basis or a compelling interest in doing so. The court concluded that, because of the above reasons, sec. 7-5-120 (Provisio)(5)(b) of the South Carolina Code is so discriminatorily selective that it is unconstitutional and a violation of equal protection.

Qualifications to Vote - Special Districts, Freeholder

James v. Ball, 613 F.2d 180 (9th Cir. 1979). Petitioned for certiorari U.S. Sup. Ct. sub nom. Ball v. James 5/2/80 (Doc. No. 79-1740)

In this case the plaintiffs challenged the constitutionality of Arizona statutes that limit voting in elections for directors of the Salt River Project Agricultural and Improvement Power District to landowners in proportion to the amount of land they own. Each plaintiff either rents land or owns less than one acre of land within the District and thus is denied the right to vote in district elections.

Guided by two cases, Reynolds v. Sims, 377 U.S. 533 (1964), and Salyer Land Co. v. Tulare Lake Basin Water Storage District, 410 U.S. 719 (1973), the court reversed the district court's decision, basing its argument on the one-person, one vote principle that the Supreme Court has applied repeatedly since the Reynolds case. The court pointed out that the Salyer case and another companion

case are the only ones since Reynolds to allow voting restrictions similar to those challenged in this case. In the Salyer case the Court held that that district's purpose was especially limited and that its activities disproportionately affected the district's landowners, thus justifying the voting restriction.

The court distinguished between the nature of the Salt River district and the one involved in the Salyer case. Specifically, the Salt River district: 1) does not primarily engage in activities that disproportionately affect landowners; 2) is the second largest utility in the state; 3) engages in operations far more diverse that the district involved in Salyer; 4) encompasses 8 Arizona municipalities, including major portions of Phoenix; 5) delivers 25% of its total water for municipal use; 6) delivers 15% of its total water for other non-agricultural uses, such as schools; 7) uses and pays for nearly 40% of its total water in activities unrelated to agriculture and landownership; and 8) does not place the financial burden of its operation on the landowners but, rather, on the consumers who purchase its electricity.

Furthermore, the court noted that the district, as a public entity, and as a political subdivision of the state, is entitled to all immunities and exemptions granted to municipalities. The court therefore reasoned that the issue at hand was whether the state can deny voting rights to citizens whose economic interest and natural environment are affected by the district's operation. Citing the case of Cipriano v. City of Houma, 395 U.S. 701 (1960), which held that to deny voting rights to a large percentage of the population affected by the operation of a municipal utility is unconstitutional, the court reversed the decision of the lower court, holding in favor of the plaintiffs.

Registration - Thirty Day Deadline Before Election

Key v. Board of Voter Registration of Charleston County, 622 F.2d 88 (4th Cir. 1980)

In this case the court of appeals affirmed the district court in the opinion that it was not racially discriminatory to require that for a voter to be qualified to vote in any election he must be registered in the appropriate voting precinct thirty days before that election. The voter had failed to notify the county board of registration when he moved from one voting precinct to another within the same county. The court stated that the South Carolina statutory requirement of voting precinct registration is constitutional. See Marston v. Lewis, 410 U.S. 679 (1973); Burns v. Fortson, 410 U.S. 686 (1973); Dunn v. Blumstein, 405 U.S. 330 (1972). The Court stated in Marston that "a person does not have a federal constitutional right to walk up to a voting place on election day and demand a ballot. States have valid and sufficient interests in providing for some period of time - prior to an election - in order to prepare adequate voter records and protect its electoral processes from possible frauds."

Voting Rights Act - At-Large Elections

Sonnier v. Mayor and Town Council of Vinton, 484 F.Supp. 146 (W.D. La. 1980)

Plaintiffs, black citizens of Vinton, Louisiana, alleged that use by the town of an at-large election system for the selection of town officials unconstitutionally diluted their votes in violation of the fourteenth and fifteenth amendments of the United States Constitution and 42 U.S.C. sec. 1973. Although fourteen percent of the town's registered voters are black, no black has ever been elected mayor or alderman. The court held that at-large election districts are not unconstitutional per se; rather, the test to be applied is whether an at-large system has the effect of diluting the impact of the minority's voting strength and whether such an impact is intended. McIntosh County Branch of NAACP v. City of Darien, 605 F.2d 753, 756 (5th Cir. 1979). Pertinent inquiries include: 1) the equality of access to the political process by minority groups; 2) whether past discrimination has the present effect of discouraging minority members' participation in the electoral process; 3) whether the governmental policy underlying the use of multimember districts is tenuous, and 4) the responsiveness of the government body in question to the needs of the minority community. Cross v. Baxter, 604 F.2d 875, 878 (5th Cir. 1979).

After thoroughly recounting and weighing testimony on current and past town political practices and cultural patterns with respect to each of these four areas of inquiry, the court found that the plaintiffs failed to meet their burden of proof. In fact, contrary to plaintiffs' allegations, the court held that the facts favored the defendants on all areas examined.

Voting Rights Act - Section 5

City of Dallas v. United States, 482 F.Supp. 183 (D.D.C. 1980)

The City of Dallas brought action seeking a declaratory judgment to determine the validity of a voting plan for city council elections pursuant to the Voting Rights Act, 42 U.S.C. § 1973c.

The Voting Rights Act requires approval of changes in procedures, including apportionment of districts, relating to voting. The statute, 42 U.S.C. § 1971a-c, provides two alternative procedures for obtaining the required approval - the determination of the attorney general or the decision by the Federal District Court for the District of Columbia.

Subsequently, the original plan which was the subject of this declaratory judgment was withdrawn by repealing a city ordinance and a new plan enacted. The attorney general approved the new plan and the city, moved for dismissal of the declaratory judgment action on the first plan on the grounds that adoption of the second plan makes the first plan moot.

Intervenors, representing black and Mexican-American voters argued that the court should evaluate the new plan on the theory that both the repealed plan

and the new plan establish three at-large seats on the eleven-seat council. According to intervenors, this common link between the two plans provides a basis for concluding that the pending action is not moot.

The court held that, because the original plan had been repealed and the City of Dallas did not attempt to implement the repealed plan, the basis for the previous controversy between the parties is non-existent and therefore moot; and that nothing in the Voting Rights Act vests the court with jurisdiction to retain a moot case to accomodate the intervenors' request for a forum in which to test a voting plan.

Voting Rights Act - Section 5

City of Rome v. United States, 450 F. Supp. 378 (D.D.C. 1978). Judgment affirmed U.S. Sup. Ct. 4/22/80 (Doc. No. 78-1840)

Plaintiffs alleged that defendants, by interposing an objection to Rome's proposed electoral changes in accordance with the Voting Rights Act of 1965 without conducting a hearing and without making findings violated article 4, section 4, and the first, fifth, ninth, tenth, and fifteenth amendments of the Constitution. Plaintiffs asserted that the defendants acted beyond the scope of their authority and defendants' objection to the electoral changes was therefore invalid and without force or effect.

The court concluded that it was without jurisdiction over plaintiff's challenge to the procedures used by the Attorney General in implementing section 5, citing Morris v. Gressette, 432 U.S. 491 (1977), which involved a challenge to the Attorney General's failure to interpose a timely objection to certain proposed electoral changes; Briscoe v. Bell, 432 U.S. 404 (1977), which involved a state's challenge to its classification as a jurisdiction subject to the Act's preclearance requirements; and Harris v. Bell, 562 F.2d 772 (1977), which involved a challenge to the Attorney General's withdrawal of a previously interposed objection. The court added that "[t]he administrative preclearance procedure is but one of two preclearance avenues that a state or local jurisdiction can pursue under section 5." The court noted that, when "the Attorney General objects to certain proposed electoral changes, the applicant-jurisdiction can always seek...a declaratory judgment from a three-judge court in this District . . . . The existence of this 'coequal' judicial preclearance procedure persuades this Court that Congress intended there to 'be no review of the Attorney General's application of the section 5 standards in deciding whether to impose an objection within the sixty-day period.'" The court then ordered both parties to continue discovery procedures so that the remaining questions could be addressed in another action.

Voting Rights Act - Section 5

City of Rome v. United States, 472 F. Supp. 221 (D.D.C 1979)

Plaintiff, a municipality administered by a council-manager form of government with a 1970 population of 30,759 of whom 76.6% were white and 23.4% were black, contended the following: 1) that Rome was entitled to "bail out" from coverage pursuant to section 4 of the Voting Rights Act independent of the State of Georgia; 2) that some or all of the objected-to changes had already been administratively precleared; 3) that section 5 of the Voting Rights Act was unconstitutional; and 4) that the disputed changes have neither the purpose nor the effect of denying or abridging the right to vote on the basis of race or color.

The 1918 original charter of the city government provided for a commission of nine members, one from each of nine wards, and a five member board of education which were elected concurrently, at-large, and by plurality vote; unlike the city commission, however, there was no residency requirement for the board of education.

In 1974 the city had submitted an annexation to the Attorney General for approval in accordance with section 5 of the Voting Rights Act. The Attorney General's investigation disclosed that other annexations and voting changes, beginning in 1966, had not been submitted for preclearance either to him or to this court as required by section 5. Eventually, Rome submitted all but one of these changes to the Attorney General for preclearance. The Attorney General precleared the following: 1) 47 of the 60 annexations; 2) the reduction in wards from 9 to 3; 3) the increase in size of the Board of Education from 5 to 6; and 4) the easing of restrictions on voter qualifications. The Attorney General did object to the following: 1) 13 annexations, insofar as they related to city commission elections; 2) (a) majority vote, (b) runoff, (c) numbered post, and (d) staggered term provisions for city commission and board of education elections; and 3) the residency requirement for board of education elections.

The court denied the plaintiff's motion for summary judgment and granted the defendant's motion of summary judgment. The court determined that the reasoning of United States v. Board of Commissioners of Sheffield, Ala., 435 U.S. 110 (1978), coupled with the legislative history and overarching purposes of the Voting Rights Act, compelled the conclusion that a political sub-unit of a covered state (such as the City of Rome) could not independently bring a section 4 bail-out action.

The court relied on Allen v. State Board of Elections, 393 U.S. 544 (1969), and Sheffield, supra, in rejecting plaintiffs argument that certain of its election rules, namely the majority vote, runoff election, and numbered post provisions had already been precleared by the Attorney General. The court held that the clearance submitted to the Attorney General applied only to the state's decision to defer to local charters and ordinances regarding majority voting, runoff election, and numbered posts but did not submit in an 'unambiguous and recordable manner' all municipal charter provisions, as written in 1968 or as amended thereafter, regarding these issues. The court also agreed with the government

that the sixty-day time period that the Attorney General had to reconsider requests commenced anew when Rome supplemented its original request. Morris v. Gressett, 432 U.S. 491 (1977).

The court rejected plaintiff's claims that section 5 was unconstitutional. The court stated that in order to declare section 5 unconstitutional, it would be necessary to overrule or ignore unequivocal and repeated holdings by the Supreme Court. See South Carolina v. Katzenbach, 383 U.S. 301 (1966), which held that section 5, together with certain other provisions of the Act, is 'an appropriate means for carrying out Congress' constitutional responsibilities and [is] consonant with all other provisions of the Constitution.' Katzenbach, among other cases, was cited with approval in Allen v. State Board of Elections, supra, and United Jewish Organizations v. Carey, 430 U.S. 144 (1977).

The court concluded that the city had carried its burden of showing that its non-annexation voting changes (majority vote, associated runoff election and numbered posts) were not enacted with a discriminatory purpose. However, the court ruled that, with respect to the majority vote and runoff election provisions, the discriminatory effect was clear beyond doubt (the court was convinced that a black candidate could win under the plurality-win system but under the majority vote/runoff election, taking note of the history of racial bloc voting, the black candidate would be at a severe disadvantage). The court noted that the effects of numbered posts, staggered terms, and board of education residency provisions were somewhat less clear but since the city failed to satisfy its burden of demonstrating that these provisions did not have the effect of discriminating on the basis of race or color the court would find for the defendant.

Finally, the court also denied the city's motion regarding the thirteen contested annexations but stated that the denial was without prejudice to renewal by the city. The court suggested that if the city agreed to revert to a simple plurality-win system (dropping the city commission residency requirement) there were strong implications that the Attorney General would be willing to grant full preclearance to the annexations.

Voting Rights Act - Section 5

Garza v. Gates, 482 F.Supp. 1211 (W.D. Texas 1980)

Motion for a preliminary injunction was sought enjoining the 1980 election process for the election of Atascosa County, Texas, Commissioners until an apportionment plan is adopted that secured preclearance under the Voting Rights Act of 1965.

The Voting Rights Act requires that objections to the 1973 redistricting plan be filed within sixty days. The major question to be decided was whether or not the Attorney General filed his objection within the required sixty days.

The Attorney General's objection letter, filed December 7, 1979, stated that previous letters of request of information necessary to complete a review on

minority voters were dated January 26, 1977, and August 11, 1977. Because of failure of the County Attorney to provide the needed information, the situation could not be reviewed.

The court held that the sixty-day time limit imposed by section five started when the Department of Justice received a call from the County Attorney that the information requested was not available. Since the Attorney General failed to respond with an objection within the sixty-day period, the reapportionment scheme became effective. See Garcia v. Uvalde County, 455 F.Supp. 101 (W.D. Tex. 1978). The court also held that plaintiffs have failed to satisfy that they are likely to succeed on the merits of their case.

Voting Rights Act - Section 5

United States v. Saint Landry Parish School Board, 601 F.2d 859 (5th Cir. 1979)

Action was brough by the government under the Voting Rights Act claiming that a vote-buying scheme allegedly carried out at a school board election violated various provisions of the act. The district court dismissed the government's two-count complaint and the government appealed.

The complaint alleged that the defendants, certain members of the Saint Landry Parish School Board, the successful candidate in the February 21, 1976, election and three poll commissioners who served in the election participated in a vote-buying scheme in which a substantial number of black voters were paid money for their votes for a candidate who was not their choice.

Count I claimed that the conduct of these three poll commissioners constituted an unapproved change in the state's procedure for assisting voters which is subject to the approval requirement of §5 of the Voting Rights Act, 42 U.S.C. §1973c. Count II claimed that the practice by these poll commissioners had the effect of denying the right to vote on account of race or color in violation of 42 U.S.C. §§ 1971(a) and 1973.

The court of appeals held that the approval requirements of § 5 of the Voting Rights Act apply only when "a state or political subdivision shall enact or seek to administer" a change in its voting procedures. The court concluded that the actions of the poll commissioners did not constitute a change that the state had sought to administer. It was found that the government's claim was "wholly insubstantial" and "completely without merit" and that the single-judge court properly dismissed the complaint.

Under 42 U.S.C. §§ 1971(a) and 1973 it was found that, since the poll commissioners' actions were only directed at black voters, this was a deprivation of the right to vote "without distinction of race." The court ruled that the district court erred in dismissing count II and reversed and remanded the decision.

SECTION III - STATE COURT CASES

Advertising and Solicitation - Political Signs

People v. Middlemark, 420 N.Y.S.2d 151 (Nassau Co. 1979)

Suit was brought by the town of North Hempstead charging that the defendants violated an ordinance which made it unlawful to erect and/or maintain any free-standing political sign in any district. The defendants admitted the charge but claimed that the ordinance violated the equal protection clause and the first amendment.

The court stated that, because political signs are a form of expression protected by the first amendment, the town had the burden of showing that the ordinance had had some rational relationship to the effectuation of a proper governmental purpose and that it was necessary to promote a compelling state interest. The court concluded that the town did not meet this burden and, therefore, held the ordinance unconstitutional.

Apportionment and Redistricting - At-Large Elections

In re Petition to Abolish Wards Hanover Township, 405 A.2d 586 (Pa. Commw. 1979)

In this case the board of commissioners of Hanover Township appeal from an order of the Luzerne County court of common pleas which abolished all wards in the township. The lower court, at the request of over 100 township residents, appointed a commission to study the propriety of abolishing the wards and abided by the commission's recommendation. The board of commissioners filed exceptions, which were dismissed following a hearing.

The board of commissioners' appeal is based on three issues. The first question is whether the section of the state code that allows a lower court to consolidate wards is superseded by art. IX, sec. 11 of the state constitution as amended in 1968. That section requires that a municipality with a governing body not eleced entirely at large be reapportioned by its governing body in the year following the federal census or at other times deemed necessary by that body. The court concluded that these provisions of the constitution and the code are not incompatible.

The board of commissioners further questions whether the lower court is permitted by statute to abolish wards entirely. Acknowledging the merit of this contention, the court nonetheless maintained that the abolition of all wards in the township can be viewed, with equal validity, as the consolidation of seven wards into one. See Butler Township Appeal, 438 A.2d 676 (Pa. 1970).

At issue, finally, is whether the voters of the township are denied equal protection by the elimination of the ward system. The court found this contention lacking merit and cited its decision in In The Matter of Columbia Borough, 354 A.2d 277 (Pa. Commw. 1976), which held that "By eliminating all wards and

providing for voting at large, it will never be necessary again to consider whether the Borough is in violation of the Supreme Court rule and it is in complete compliance with the one man-one vote principle...."

The court affirmed the decision of the lower court.

Apportionment and Redistricting - Residency Requirements of Candidates

Toldson v. Fair, 374 So.2d 759 (La. Ct. App. 1979)

The defendant in this case is a district police juror who is a candidate for re-election to that office. The plaintiff brought suit, alleging that the defendant did not meet the residency requirement to run for office, as set forth in art. 3, sec. 4(A) of the Louisiana constitution of 1974, because he did not actually reside within the district in which he filed for candidacy. The district court found in favor of the defendant, and the plaintiff appealed.

Before he filed for reelection, the defendant's ward was reapportioned by federal court order, and about one month before filing for candidacy, he moved into his father-in-law's home, which is located in the district in which he presently holds office and in which he filed.

A Louisiana statute requires that police jurors meet the same qualifications for office as members of the house of representatives, and refers to the qualifications as set forth in art. 3, sec. 4 of the state constitution. Section 4(A) mandates that a candidate be a state resident for two years and a resident of the legislative district from which he seeks election for one year prior to the election. Section 4(B) allows an elector to qualify as a candidate at the next regular election from a district that was created in whole or part from a district existing prior to "legislative reapportionment."

The plaintiff contends that the qualifications for police jurors are governed exclusively by art. 3, sec. 4(A) of the constitution, and that sec. 4(B) does not apply, since it refers only to "members of the legislature." The court held that all requirements for candidacy to the legislature apply equally to police jurors, noting that sec. 4(B) was added to the 1974 constitution as part of substantial revisions regarding qualifications of legislators.

The plaintiff further contends that this provision applies only to legislative and and not judicial reapportionment. The court found that this allegation lacked merit, reasoning that sec. 4(B) was meant to compensate for the "inherent prejudice" to an elector whose district has been reapportioned, and that the prejudice is the same whether the reapportionment is effected by legislative or judicial action. See Pendleton v. Jackson, 256 So.2d 494 (La. Ct. App. 1972), writ refused 260 La. 691, 257 So.2d 152 (1972).

Section 4(B) also provides that "The seat of any member who changes his domicile from the district he represents or, if elected after reapportionment, whose domicile is not within the district he represents at the time he is sworn into

office, shall be vacated thereby, any declaration of retention of domicile to the contrary notwithstanding." The court found it unnecessary to determine whether the defendant has actually acquired a residence in the district in which he filed, since this does not become an issue until the defendant is elected and sworn into office.

The court agreed with the lower court that the defendant met all residency requirements and affirmed its decision.

Ballots - Access Requirement

Thomas v. Lyons, 586 S.W.2d 711 (Ky. 1979)

A candidate for nomination to the office of councilman brought suit to prevent the names of two of his opponents from appearing on the primary ballot, charging that they failed to qualify for a ballot position. The circuit court decided in favor of the plaintiff and the court of appeals reversed.

Kentucky statute 118.176, which was followed in this case, outlines the procedure for challenging the good faith of a candidate seeking party nomination or election as an independent. Although that statute holds the decision of the appeals court as final, the supreme court granted the plaintiff's motion for discretionary review, noting that this provision is in opposition to sec. 110 (2)(b) of the state constitution, which authorizes the supreme court to exercise appellate jurisdication according to its own rules.

The basis of the plaintiff's challenge was that the defendants were ineligible to run in the nonpartisan primary, having failed to meet the petition signature requirements established by Kentucky statute 89.440 and art. 4.04 of the Lexington-Fayette Urban County Government charter. Since the factual findings of the trial court were not contested and the supreme court held them conclusive, the issues on review were whether the statute establishing qualifications is unconstitutional, in violation of the equal protection clause, and whether the challenging procedure followed by the plaintifff was properly available to him.

The court noted that in a nonpartisan primary all candidates are essentially equal and all have the same burden of qualification. Although the defendant argued that the case of Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173 (1079), applied in this instance, the court discerned an essential difference. In Illinois, the question of equal protection was considered in the context of partisan elections, where the qualifications of partisan candidates and independents were different, whereas in this case the signature requirements for all candidates were the same. The court noted a closer analogy to the case of American Party of Texas v. White, 415 U.S. 767 (1974). American Party held that a statute requiring a candidate to demonstrate a "significant modicum of support" by acquiring a minimum number of signatures was not unconstitutional.

The final question raised by the defendant was whether the plaintiff followed the proper procedure for challenging the candidacy of his opponents; it was on this point that the appeals court reversed the trial court's decision. In its opinion the supreme court pointed out that the Lexington-Fayette Urban County Government is a "governmental unit unlike any other in the state." It is governed by its own voter-approved charter and its powers and responsibilities are those of a second-class city operating under the city manager form of government. According to its charter, all state election laws apply to the urban county government, except as they expressly contradict provisions of the charter.

The defendant's counsel pointed to another statute, KRS 120.055, which he claimed was the proper remedy for the plaintiff to follow in challenging the candidacy of his opponents. The court noted that KRS 120.055 is an election-contest statute and that, since an election contest is a post-election procedure, this statute is not relevant to the case.

The court reversed the decision of the appeals court, affirming the trial court's decision.

Ballots - Access Requirement - Independent & Minority Party

West Virgina Libertarian Party v. Manchin, No. 14863, (W. Va. September 16, 1980). Appeal Dismissed 10/6/80 U.S Sup. Ct. sub nom. Citizens Party v. Manchin (Doc. No. 79-1989)

The petitioners in this original mandamus proceeding were the West Virginia Libertarian Party, the West Virginia Socialists Workers Campaign Committee and their gubernatorial candidate, and John Anderson, an independent candidate for United States President.

The West Virginia election statutes were challenged on constitutionl grounds as follows: 1) section 3-5-8, which relates to filing fees, is claimed to be a violation of the equal protection clauses of the state and federal Constitutions because it denies ballot access to candidates unable to pay the filing fee; 2) section 3-5-23 purportedly denies the fundamental right of access to the ballot by an independent candidate not aligned with a political party; 3) section 3-5-23 is attacked on the basis of its requirement that persons circulating nominating petitions must reside in the same magisterial district as persons who sign the petitions; 4) section 3-5-23 is challenged because of its requirement that persons soliciting signatures on a nominating petition must first obtain a credentials certificate; and 5) section 3-5-23, which disqualifies those persons signing a nomination petition from voting in the primary election, in combination with sec. 3-5-24, which requires that the candidate must file his or her signature petitions no later than the day preceding the primary election.

Because the primary election of June 3, 1980, was imminent and third party signature petitions had to be filed by June 2, the court issued an order on May 22, granting in part and denying in part the requested relief.

The court held that the failure of sec. 3-5-8 to provide a reasonable alternative for indigent candidates to obtain access to the ballot, (such as petitions containing voter signatures) makes the filing fee requirement a violation of the equal protection clause principles. See Lubin v. Panish, 415 U.S. 709 (1974), Bullock v. Carter, 405 U.S. 134 (1972), and State ex rel. Piccirillo v. City of Follansbee, 233 S.E.2d 419 (W. Va 1977).

The court determined that sec. 3-5-23 also violates the equal protection clause in that it fails to extend to an independent candidate the same right to ballot access as that of the political party candidate. See Storer v. Brown, 415 U.S. 724 (1974).

The court held that the residence requirement of sec. 3-5-23, which does not affect regular party candidates, is not justified by a compelling state interest and therefore violates the equal protection clause of the state and federal Constitutions. See Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173 (1979); Moore v. Ogilvie, 394 U.S. 814 (1969); and Communist Party of Illinois v. State Board of Elections, 518 F.2d 517 (7th Cir. 1975), cert. denied, 423 U.S. 986. The court noted that substantial burdens are imposed on a third-party or independent candidate by the magisterial district restriction. The candidate is forced into a relatively immobile, fragmented and expensive signature petition campaign. The restriction also hampers solicitation of signatures in locations where citizens tend to congregate in large numbers (such as downtown areas, shopping centers and public parks and theaters), since persons congregating in those areas are rarely residents of the magisterial district in which the area or facility is located. Finally, the court noted that, since boundaries of magisterial districts are difficult to ascertain, invalid signatures can easily appear on the petition.

However, the court concluded that the credentials requirement set out in sec. 3-5-23 places no unconstitutional burden on independent or third-party candidates because it is narrow in the scope of the information required and does not contain vague terms which would permit the issuing official to do more than routinely issue the credentials. The court noted that the credentials requirement serves a substantial state interest in assuring the integrity of the signature solicitation process.

The court held that the combined effects of sec. 3-5-23 and sec. 3-5-24 did not violate the equal protection clause of the state and federal Constitutions. The court held that these provisions constitute a method for third-party or independent candidates to gain access to the general election ballot and, at least as to the voters in the ranks of third parties, that the petition process serves as the functional equivalent of a primary election. The court determined that the state did not impose a significantly higher burden on the independent or third-party candidate than it has imposed on major-party candidates. The court, led by the teachings of Storer v. Brown, 415 U.S. 724 (1974), and American Party of Texas v. White, 415 U.S. 767 (1974), declined to extend the requirement that a state enact no statutes which prohibit persons from voting in their regular-party primaries even though they have signed third-party or independent candidates' petitions.

The court also rejected the alternative solution of advancing the deadline for filing the signature petitions to a time sufficiently in advance of the primary election date so that identification of the signatures can be undertaken in regard to candidates for whom the voter will be ineligible to vote in his regular-party primary. The court determined that such a solution poses substantial difficulties for election officials, not only in the identification mechanics, but in transmitting this information to election officials in the precinct where the voter resides. The court stated that such a solution also works against the interest of third-party and independent candidates since it reduces the time period in which they can engage in effective signature solicitation for their candidacy petitions. See McCarthy v. Noel, 420 F. Supp. 799 (D. R.I. 1976).

Ballots - Party Affiliation - Designation

State ex rel. Graham v. Board of Elections, 60 Ohio St.2d 123, 397 N.E.2d 1204 (1979)

This action was an appeal of a decision of the court of appeals of Cuyahoga County granting a writ of prohibition preventing the name of a potential candidate for city council from appearing on the Republican party ballot in the primary and general elections.

The supreme court affirmed, holding that, since the city charter made no special provision regarding a primary candidate's qualifications, the general law of Ohio controlled (sec. 10 art. IX of the Lakewood City charter); thus, the potential candidate was prohibited from appearing on the Republican party ballot in violation of the state statute prohibiting any person from being a candidate for nomination or election at a party primary if he voted as a member of a different political party at primary elections within the preceding four calendar years. The court also held that the appellee, a member of an opposing political party had cause to bring action to prevent the board of elections from placing the potential candidate's name on the ballot.

Boards and Commissions - Jurisdiction

Zimmerman v. Florida Elections Commission, 373 So.2d 58 (Fla. Ct. App. 1979)

The Florida Elections Commission issued an order, having found "probable cause to believe" that a county sheriff willfully violated provisions of the state election code during his 1976 campaign for office. The commission had notified the sheriff that he was under investigation and conducted a hearing; however, the commission's order referred to sections of the code which it believed the sheriff had violated, but which it had not listed in its notice to him. The sheriff (appellant) argued that the commission improperly expanded the scope of its investigation without notifying him.

The chapter of the election code in question was amended by the legislature in 1977, after the appellant's election, and these revisions affect the jurisdiction of the state elections commission concerning the investigation and adjudication of election offenses. The pertinent changes are as follows:

(a) Prior to the 1977 revisions, the commission had authority to investigate possible violations by candidates for federal, state, legislative or judicial office; after 1978, the commission had authority to hold hearings on possible violations by any elected official in the state;

(b) The commission originally had authority only to determine if probable cause existed to believe that a violation had occurred, and the state division of elections held investigative authority; after 1978, the division of elections receives complaints and reports to the commission, which is then required either to make a preliminary determination to study the matter or to refer it to the state attorney.

(c) According to the 1977 revision, if the state attorney does not act upon the commission's referral, the commission may hold an adjudicatory hearing to determine whether violations occurred and to assess civil penalties.

The court found that, since these revisions took effect after the appellant's campaign and election, portions of the commission's actions were without authority. Prior to 1978, the commission had no authority to investigate possible violations by local officials and after 1978 was required to refer the complaint to the state attorney or hold a preliminary hearing; under neither statute was it authorized to hold an extensive hearing, determine probable cause and refer the case, with records, to the state attorney, as it had done in this case.

The court also noted that the commission did not indicate in its order which statute it was following when it conducted the hearing, calling its proceeding "a hybrid...not authorized under either statute." The court vacated the commission's order.

Campaign Financing - Contributions - Disclosure

Kaler v. Common Cause of Georgia, 262 S.E. 2d 132 (Ga. 1979)

Candidate appealed a decision of the superior court permanently enjoining the State Campaign and Financial Disclosure Commission from adopting an interpretation of the Campaign and Financial Disclosure Act which would require a candidate to disclose all transfers and expenditures of personal funds on behalf of his campaign.

The Campaign and Financial Disclosure Act requires a candidate to file a report including all contributions and expenditures of $101 or more or when the accumulation of lesser amounts by or to a person is $101 or more for the

entire calendar year in which the report is filed. "Person" is defined to mean "an individual, partnership, committee, association, corporation, labor organization or any other organization or group of persons."

The court affirmed the lower court's decision and stated that "contribution" as defined by the Act includes the public disclosure of all sources of funds - not only the transfer of the candidate's personal funds to his campaign but also the expenditure of these funds for the candidate's campaign.

Campaign Financing - Contributions - Illegal

State v. Granato, 610 P.2d 1290 (Utah 1980)

In this case the defendant, an employee of a liquor distillery, appealed his conviction of violating Utah Code Annotated 32-4-22 and 76-4-101. Section 32-4-22 of the Liquor Control Act prohibits a licensee, dealer, manufacturer, distiller or agent or representative of intoxicating liquor from making a contribution to any candidate for political office. Section 76-4-101 is the attempt provision of the Criminal Code. The defendant challenged the constitutionality of sec. 32-4-22.

The court reversed the lower court decision. The court held that, since the state chose to charge the defendant with an attempt to commit a crime, the state must prove that the defendant acted with the kind of criminal intent required for the commission of the offense and also with conduct which constituted a substantial step towards its commission. The court stated that 76-4-101 is not solely a statute which prohibits a wrong but also that it recognizes that some guilty knowledge is necessary to violate it. The court noted that the state itself stipulated that the defendant had no knowledge of the prohibitory statute. The court also noted that there is nothing inherently wrong in a person making a contribution to assist another in his effort to be elected to public office but that even if it were it would be necessary for there to be a contributor and a receiver. In this instance the candidate did not accept the contribution when he discovered that the person who had made it was employed by a liquor distillery. The court held that the statutes do not expressly make an attempt to violate sec. 32-4-22 an offense. The court, referring to Heathman v. Giles, 374 P.2d 839 (1962), refused to pass upon the constitutionality of sec. 32-4-22 because it was not essential to the solution of the controversy.

Campaign Financing - Contributions - Limitations

Citizens Against Rent Control v. City of Berkeley, 27 Cal.3d 819, 614 P.2d 742 (1980). Petitioned for certiorari U.S. Sup. Ct. 11/5/80. (Doc. No. 80-737)

Defendants, the City of Berkeley, Berkeley Fair Campaign Practices Commission and others, appealed a summary judgment of the lower court, which declared that sec. 602 of the Berkeley Election Reform Act of 1974 was unconstitutional as

violative of the first amendment rights of free speech and association. Section 602 provides that no person may make a contribution which exceeds $250 in support of or in opposition to any measure.

Plaintiffs, a political committee known as the "Citizens Against Rent Control/ Coalition for Fair Housing" (CARC), had received contributions from a number of individuals in excess of $250 with the aggregate sum of such contributions amounting to $18,600. Defendant, Berkeley Fair Campaign Practices Commission, had ordered that CARC forfeit the $18,600 to the City of Berkeley as required by sec. 604 of the Act. Plaintiffs sought and received first a temporary restraining order and then the summary judgment.

The court reversed the judgement of the lower court. The court applied the strict scrutiny test, which requires that the law be supported by a compelling state interest and that this interest be promoted by means which are closely drawn so as to avoid unnecessary interference with protected freedoms.

The court stated that the claim that a campaign committee's right to engage in effective political advocacy is affected by a contribution ceiling was answered by the decision in Buckley v. Valeo, 424 U.S. 1 (1976). The Supreme court recognized the problems that would result if a contribution limit did prevent effective advocacy, but stated: "The overall effect of the Act's contribution ceilings is merely to require candidates and political committees to raise funds from a greater number of persons and to compel people who would otherwise contribute amounts greater than the statutory limits to expend such funds on direct political expression, rather than to reduce the total amount of money potential available to promote political expression."

The court held that the law under attack did not interfere with effective advocacy or dissemination of information by all sides to a ballot measure controversy, but instead was designed to preserve initiative and referendum elections for the purpose for which thery were created, and tended to prevent corruption of the political process. The court rejected the argument that mere disclosure of contributions was sufficient for this purpose.

The court also held that the ordinance did not impermissibly limit associational rights guaranteed by the first amendment. The court stated that in Buckley, id., the Supreme Court observed that contribution ceilings leave the contributor "free to become a member of any political association and to assist personally in the association's efforts...."

Campaign Financing - Expenditures

New Jersey State Chamber of Commerce v. New Jersey Election Law Enforcement Commission, 82 N.J. 57, 411 A.2d 168 (1980)

This appeal challenged the constitutionality of the New Jersey Campaign Contributions and Expenditures Reporting Act, N.J.S.A. 19:44A-1 et seq. This Act dealt with spending limitations upon political candidates and funding relating to

political campaigns and elections involving elective public office and public questions. This appeal also challenged Administrative Regulation N.J.A.C. 19:25-12.1(e), which imposed a minimum expenditure of $100 as a threshold condition for enforcement of the provisions of the Act. The lower court held that, although the statute impermissibly encroached on first amendment rights of expression, it could be freed from constitutional doubt or defect through "judicial surgery" or narrow construction. The lower court attempted to salvage the legislation by raising the monetary threshold exemptions for political organizations from $100 to $750 in order to avoid the chilling effect on groups which collect or spend small sums of money to influence legislation in limited contexts.

The court affirmed the lower court with a modified opinion. The court held that the reporting and financial disclosure requirements imposed by the Act were not unconstitutionally overbroad under the first amendment. The court relied on Buckley v. Valeo, 424 U.S. 1 (1975), in which several disclosure provisions of the Federal Election Campaign Act of 1971 were upheld in recognition that the governmental interests sought to be vindicated by the disclosure requirements were sufficiently important to outweigh the possiblity of first amendment infringement. The court noted that it was the evident purpose of the New Jersey Act to preserve and enhance the democratic political process in both its electoral and legislative aspects by encouraging openness in government. The court recognized that public revelation of those who endeavor to control or direct the destiny of legislation through the use of money and the ultimate public accountability of legislative representatives who respond to such endeavors constituted governmental concerns of a compelling magnitude.

The court agreed with the lower court's holding that under the Act a discretionary administrative power to impose a monetary enforcement threshold was appropriate but that the administrative regulation setting a $100 threshold was too low and was therefore an invalid exercise of administrative authority. However, the court did not agree that it was appropriate, in this instance, for the courts to engage in "judicial surgery." The court concentrated upon that section of the Act which focuses upon individuals who seek 'to influence the content, introduction, passage or defeat of legislation.' N.J.S.A. 19:44A-3g; 19:44A-a. The court considered these sections to be privotal provisions of the Act which contributed to its overbreadth threat to first amendment rights because the crucial phraseology, 'to influence,' was not defined. The court, relying on the teaching of United States v. Harriss, 347 U.S. 612 (1954), determined that the meaning to be ascribed to this terminology is activity which consists of direct, express, and intentional communications with legislators undertaken on a substantial basis by individuals acting jointly for the specific purpose of seeking to affect the introduction, passage, or defeat of, or to affect the content of legislative proposals. The court was confident that, so construed, the reporting act leaves unfettered those individuals whose activities would have only an attenuated and less tangible effect on the legislative process.

The court set aside the lower court's interpretive approach in fixing the threshold amount from $100 to $750, since this judicial manipulation of the statute would be unnecessary to save the statute from constitutional overbreadth. The

court noted that the Commission had the opportunity to adopt an appropriate regulation fixing a higher monetary threshold amount consistent with this opinion because the ruling invalidating the present regulation would not become effective for ninety days.

Campaign Financing - Contributions - Influence City Council

Woodland Hills Residents Assn., Inc. v. City Council, 26 Cal.3d 938 (1980)

This appeals case concerns the city council approval of a subdivision map for a real estate development. This digest concerns plaintiffs' contention that particular council members should have been disqualified from voting on the proposed subdivision because parties having a financial interest in the real estate development had made political contributions to their campaign committees. Plaintiffs based this contention on the fair hearing requirement of the Code of Civil Procedure sec. 1094.5.

The trial court found that money exceeding $9,000 had been contributed to the campaign committees of the bare majority of members who had voted to approve the proposed subdivision. Contributions were also made to the campaign committees of two members who absented themselves from the council's vote and to two other members who voted against the approval. The trial court concluded that, absent a showing of bribery or conflict of interest, the law allows members of the council to vote on projects of developers who have given them campaign contributions.

The court affirmed the judgment. The court stated that the Political Reform Act of 1974 (Gov. code, sec. 81000 et seq.) adequately protects against corruption and bias. The Act provides for disclosure of campaign contributions by the recipients of those contributions, rather than disqualification of the recipients from acting in matters in which the contributor is interested.

The court held that political contributions involve an exercise of fundamental freedom protected by the first amendment of the United States Constitution and art. I, sec. 2 of the California Constitution. Buckley v. Valeo, 424 U.S. 1 (1975); Hardie v. Eu, 18 Cal.3d 371 (1976). The court held that, while disqualifying contribution recipients from voting would not prohibit contributions, it would curtail contributors' constitutional rights. Representative government would be thwarted by depriving certain classes of voters (i.e., developers, builders, engineers, and attorneys who are related in some fashion to developers) of the constitutional right to participate in the electoral process. The court stated that governmental restraint on political activity must be strictly scrutinized and is justified only by a compelling state interest. Buckley v. Valeo, supra.

Candidate - Ballot Access

Coon v. Allegheny County Board of Elections, 410 A.2d 1243 (Pa. 1980)

The court affirmed the lower court's dimissal of complaint which was filed by a candidate for the nomination of the Democratic party for the office of county commissioner in the primary election of 1979. The complainant had received the third-highest number of votes cast in the Democratic Primary Election.

The complainant challenges the manner in which art. 9, sec. 4 of the Pennyslvania Constitution of 1968 and its predecessor in the Pennsylvania Constitution of 1874 have been implemented. This section provides that "three county commissioners will be elected in each county. In the election of these officers each qualified elector shall vote for no more than two persons, and the three persons receiving the highest number of votes shall be elected."

In the past, political parties have nominated only two candidates for the office of county commissioner by means of conventions or caucuses. When primary elections were adopted as the process by which candidates for public office were to be nominated, the constitutional provision was made applicable by common practice to the primary election. As a result, in both the municipal and primary elections, each elector voted for only two persons, each party nominated two candidates at the primary election, and the three persons having the highest number of votes at the municipal election were elected to the offices.

Appellant reasons that, since the term "election" includes any "municpal" or "primary" election, the term "election" in the final phrase in art. 9, sec. 4, includes "nominated" so that the "three persons receiving the highest number of votes [in a primary election] shall be" nominated.

The court held that appellant's reasoning that the term "election" is so inextricably tied to the term "elected" so that "elected" includes "nominated" ignores the statutory basis relied on in Thiemann v. Allen, 485 Pa. 431 (1979). The court stated that appellant's interpretation of the term "elected" is contrary to the statutory scheme of 25 Pennsylvania Statutes secs. 2601 et seq., which generally distinguishes between being "nominated" at a primary election and being "elected" at a municipal or general election.

The court also stated that, while art. 9, sec. 4, of the constitution does not expressly limit the number of nominees, historically a limitation on the number of persons an elector may vote for has been understood as a limitation on the number of candidates a party may nominate. The court held that this interpretation of art. 9, sec. 4, would not render it violative of the federal Constitution. The court stated that this interpretation merely encourages rather than guarantees minority party representation because, inter alia, "a write-in candidate can be elected as the third commissioner although he is also a member of the party which elects its two slated candidates. Commonwealth ex rel Teller v. Jennings, 409 Pa. 513 (1963).

Candidate - Independent - Filing Requirement

Minnesota Fifth Congressional District Independent-Republican Party v. Minnesota, No. 197 (Minn. August 8, 1980)

The court affirmed the lower court decision that Minnesota statute 202A.22, subd. 1(m), violates first amendment rights of political association and expression. This statute requires that any candidate filing for a municipal partisan office as an "Independent" state in his affidavit of candidacy "that he did not seek, does not intend to seek and will not accept any party's support for his candidacy."

Plaintiff, an authorized district committee of the Independent-Republican Party, has supported the candidacies of persons filing as independents in previous city council elections.

The court recognized that the state has a compelling interest in ensuring that candidates who run for election as "Independents" are truly independent so as not to jeopardize the stability of its political system. See Storer v. Brown, 415 U.S. 724 (1974), McInerney v. Wrightson, 421 F. Supp. 726 (D. Del. 1976), and MacBride v. Askew, 541 F.2d 465 (5th Cir. 1976). The court also recognized that a restriction on protected rights must not go beyond what the state's compelling interest actually requires. See MacBride v. Exxon, 558 F.2d 443 (8th Cir. 1977).

The court held that the disclosure and reporting requirements of Minnesota Statutes ensure that the public will not be misled by a candidate who holds himself out as an independent but is actually supported by a political party. The court endorsed the attitude of the lower court when it agreed that "[t]his Court * * * has a deep respect for the ability of voters to ferret out the truth. The public is well able to ascertain sources of support for independent candidates and use such information accordingly at the polls."

The court concluded that the Minnesota statute discriminates against independent candidates; party candidates may seek and accept support from any quarter. The court held that, under the United States Constitution, government is not permitted to restrict, as this statute attempts to do, the quantity of "political communication and association by persons, groups, candidates and political parties." Buckley v. Valeo, 424 U.S. 1 (1976).

Candidates - Name Change

None of the Above v. Hardy, 377 So.2d 385 (La. Ct. App. 1979)

Plaintiff, a qualified candidate for the office of governor of the state of Louisiana, requested the secretary of state to change his name on the ballot a month after the qualifying period. Plaintiff legally changed his name from Luther Devine Knox to None-Of-the-Above. The Attorney General found the name change on the ballot to be deceptive and not permissible under sec. 18:463

of the Louisiana Revised Statutes Annotated. Appellant filed suite requesting that the statute (LSA - RS 18:463) and the Attorney General's opinion be declared unconstitutional and that the defendants be required to change the appellant's name on the ballot or that the defendants be enjoined from holding the gubernatorial election.

The court held that the statute in question states that the candidate shall designate in his notice of candidacy the form in which his name shall be placed on the ballot as long as the candidate shall not designate a deceptive name. A state also has a constitutional right to protect voters from confusion or fraudulent or frivolous candidates. The court concluded that "None-of-the-Above" appearing on the ballot would be misleading, deceptive and a violation of the statute.

Candidate - Nominating Petitions

Bowe v. Chicago Electoral Board, 404 N.E.2d 180 (Ill. 1980)

The court reversed the appellate court and affirmed the circuit court in holding that, in accordance with Election Code sec. 7-10, a person who circulates nomination petitions must personally appear before the notary public and swear that the signatures on each petition sheet were signed in his or her presence, and are genuine, and that to the best of his or her knowledge the persons so signing were qualified voters of the political party for which a nomination is sought. The ruling reduced the number of valid signatures for a candidate for Democratic ward committeeman below the legal minimum and the candidate's name was not printed on the ballot. The court stated that the requirements of sec. 7-10 were mandatory and not directory. Lawlor v. Municipal Officer Electoral Board, 329 N.E.2d 436 (1975).

Candidates - Nominating Petition

Caralyus v. Hayduk, 421 N.Y.S.2d 80 (App. Div. 1979)

A suit was brought to invalidate a petition nominating appellant as candidate of the Open Door Party in the General Election held on November 6, 1979, for public offices. On appeal, the supreme court held that participation in a primary which involved contested candidacies for other offices did not preclude voters from signing as subscribing witnesses the nominating petition of a candidate for an office which was not contested.

Candidates - Nominating Petitions

In re Lucasi, 407 A.2d 81 (Pa. Commw. Ct. 1979)

Petition was filed in the court of common pleas pursuant to Section 977 of the Pennsylvania Election Code to set aside nomination papers filed with the county

board of elections to nominate an individual for the office of mayor. The court dismissed the petition and the petitioner appealed.

The commonwealth court held that, because the proposed nominee for mayor was a registered, voting, elected and active member of the Republican party and was not eligible to be a nominee of an independent political party and because the nomination papers were filed by the nominee after the filing deadline, the nomination papers were declared null and void and the county board of elections would be prohibited from certifying the nomination papers.

Candidates - Nominating Petitions

Kahler v. NcNab, 396 N.E.2d 200 (N.Y. 1979)

The court of appeals affirmed the supreme court's decision to grant a petition to invalidate nominating petitions designating candidates for various public offices. The court held that neither slate of officers involved in these proceedings was the authorized representative of the town Conservative party and that, therefore, the "holdover' officers of the town committee properly continued in office in the absence of evidence that the county committee was empowered to resolve the dispute by choosing one slate over the other or that the committee usually exercised such power.

Candidates - Nominating Petitions

Suarez v. Sadowski, 396 N.E.2d 198 (N.Y. 1979)

In this case the court of appeals affirmed the supreme court's decision granting a petition to invalidate petitions designating appellants and others as candidates for party positions in a primary election and directing that they be stricken from the ballot.

The court found that, on petitions submitted by candidates for certain Democratic party positions, only 333 out of the required 346 signatures were valid. During the hearing respondents sought to show that a number of the signatures invalidated were indeed valid. But because no cross petition to validate the signatures had been filed and the petitioners were not otherwise alerted in the proceeding that respondents intended to seek validation of these signatures, it was found to be unfair for petitioners to have to meet the proof of the respondents.

The court held that the respondents were not entitled to submit evidence to refute the findings of the Board of Elections that a large number of the signatures on the petition were valid. The court stated that there would always be the possibility that respondents could raise new issues without prior notice and require full resumption of the proceedings on points which neither the parties nor the court was previously prepared to consider.

Candidates - Petition Requirements

Higby v. Mahoney, 396 N.E.2d 183 (N.Y. Ct. App. 1979)

At issue in this case was the doctrine of stare decisis; specifically, the question of whether the court should overturn recent judicial interpretation of an election statute. In this review, appellant sought to have the court validate his designating petition for the office of town councilman. The county election board had invalidated the petition because certain signers, contrary to statute, had failed to indicate their assembly district. The Supreme Court of Erie County ordered the Board to validate the petition, the appellate division reversed, and the candidate appealed to this court.

The court invoked three recent cases in which it had decided against the appellant's position (See Matter of Rutter v. Coveney, 348 N.E.2d 913 (N.Y. Ct. App.) and held that to overturn such recent judicial interpretation would be irresponsible. Furthermore, the court reasoned that changes of law by legislative action are preferrable to changes by judicial action and insisted that it is the responsibility of the legislature to regulate political affairs.

The appellant's designating petition had been invalidated because of the failure of subscribing witnesses to list their legislative districts, although the town in which the signers resided was all part of one legislative district. While the appellant claimed that this was insufficient cause to invalidate the petition, the court pointed to judicial precedent, to the necessity of conformity to election statutes and to the fact that such a requirement is neither demanding nor a formidable obstacle to a citizen's right to vote.

The court affirmed the decision of the lower court.

Candidates - Public Employees

State v. Lorain County Board of Elections, 394 N.E.2d 321 (Ohio Ct. of App. 1978)

Petition was filed for writ of mandamus requiring that the election of one of three councilmen (elected in the Nov. 8, 1977 election) be cancelled and the election certificate recalled because the councilman was an employee of the United States Post Office prior to the election.

The court held that there was no authority requiring the board to disqualify the candidate because he was a public employee or official. A candidate need not qualify for the office in order to run. However, if elected, the candidate must be qualified when he assumes that office. This means that a candidate may not hold any other public office or employment only when he becomes a member of the legislative authority.

Candidates - Qualifications - Bondability

State ex rel. Bromelow v. Daniel, 258 S.E. 2d 119 (W. Va. 1979)

The Village of Bethlehem, West Virginia, imposes an ordinance on candidates for the offices of mayor and recorder, requiring them to submit written evidence of bondability in order to secure a place on the village election ballot. The relator, a candidate for the office of mayor, brought this original mandamus proceeding, contending that the eligibility requirement is void.

Citing the case of Marra v. Zink, 256 S.E.2d 581 (W. Va. 1979), which held that art. 4, sec. 4 of the state constitution had exclusive authority for establishing qualifications for municipal office, the court noted that the single constitutional qualification is that a candidate must be a citizen entitled to vote. Because of Marra's "precise applicability to the present case," the court concluded that no further discussion is warranted.

Since the respondent filed a similar mandamus action in the circuit court and was denied relief, the respondents claim that he should have appealed the decision and that an original mandamus in this court is improper. The court pointed to State ex rel. Maloney v. McCartney, 223 S.E.2d 607 (W. Va. 1976), which established a liberal mandamus procedure in election cases. The court reasoned that the importance of determining the qualifications of candidates in advance of an election, thus avoiding the possibility of a void or voidable contest, necessitates the availability of a proceeding to resolve such questions expeditiously. The relator asserted that he filed in the circuit court because of the supreme court's rules of practice, which encourage filing in the circuit court; however, he claimed that he was unable to prepare his case for appeal in time for the court to act prior to the election date.

The respondents offered a procedural objection, noting that the original mandamus was not verified and that their motion for dismissal should be granted. The court noted that the trend in recent years is to minimize the use of oaths, affidavits and seals in many legal matters. The court further noted that the respondents did not deny the "essential facts" in this petition and concluded that lack of verification was insufficient reason for dismissal.

The court held the village ordinance void and awarded a writ of mandamus.

Candidates - Qualifications - Residence Requirements

Hall v. Miller, 584 S.W.2d 51 (Ct. App. Ky 1979)

In this case the court affirmed the lower court's decision declaring that the Kentucky Statute, 84.280(2), which imposed three-year voter and residency requirements for mayoral candidates in second-class cities, was unconstitutional as violative of the equal protection clause of the fourteenth amendment.

In arriving at this decision of first impression in Kentucky, the court followed the reasoning of other decisions holding that the restrictions placed on a person's nonfundamental right to run for public office significantly affected certain of the public's fundamental rights (voter's right to a choice of candidates and the right of a citizen to travel without penalization) and, therefore, justified the application of the compelling state interest test in determining the constitutionality of these restrictions. Mogk v. City of Detroit, 335 F. Supp. 698 (E.D. Mich 1971), Green v. McKeon, 468 F.2d 883 (6th Cir. 1972), and Bolanowski v. Raich, 330 F. Supp. 724 (E.D. Mich 1971).

The court disagreed with the arguments that the infringements on these rights were justified by the state's interests of insuring that the candidate is familiar with the people in the area which he wishes to represent, the prevention of frivolous candidacies, and insuring that the voters are familiar with the candidate. The court quoted Bolanowski, in which it was stated that it was conceivable for a citizen to live in a city for an entire lifetime without taking an interest in municipal affairs and also possible for a citizen to have a good understanding of municipal difficulties after living there for a relatively short period, and Mogk, in which it was stated that the electorate may voice its sentiment at the ballot box if a short sojourn in the community is considered to be a disqualification.

The court concluded with the statement that "The true strength of our Constitution rests with its ability to grow and meet the needs of modern society. In the past KRS 84.280(2) served a useful purpose. Today with a mobile society lengthy durational requirements are violative of the equal protection clause of the fourteenth amendment."

Candidates - Qualifications - Residence Requirements

Marra v. Zink, 256 S.E.2d 581 (W. Va. 1979)

In this case the court affirmed the holding of the lower court, which held that a city charter provision requiring candidates for city council to be city residents for one year was unconstitutional. The court overturned its own ruling in State ex rel. Thompson v. McAllister, 18 S.E. 770 (1893), which held that the West Virginia legislature under authority of the West Virginia constitution, art. 4 sec. 8 may create qualifications for a municipal office which are in excess of those set forth in art. 4, sec. 4 (The only qualification specified in sec. 4 which is applicable to this case is a requirement that all elected municipal officers be qualified voters.). The court adopted the dissenting opinion in Thompson, which stated that art. 4, sec. 4 is the exclusive constitutional quthority for the establishment of qualifications for municipal office, while art. 4., sec. 8 provides authority for the legislature to establish by general law 'terms of office, powers, duties, and compensation of all public officers and agents, and the manner in which they shall be elected,' but does not provide for the establishment of qualifications.

In answering the question of why art. 4, sec. 4 should be interpreted as being more restrictive or exclusive today than it was in 1893, the court cited McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 407 (1819), which stated that, 'it is a constitution which we are expounding.' The court noted that the law has been moving rapidly in the direction of removing all unreasonable barriers to elective office through the use of constitutional provisions other than art. 4, sec. 4. The court stated that under present-day federal and state equal protection and first amendment concepts the right to become a candidate for public office is a fundamental right and any classification which restricts that right must serve a compelling governmental interest. The court disagreed with the appellant's assertion that a one year residency requirement meets this test by assuring that candidates are familiar with the city and knowledgable about local issues. The court stated that "knowledge, appreciation, and comprehension of the public issues...are so much the product of the variables of motivation, intelligence, maturity, experience, opportunity, and desire as to make any flat rule of physical residence appear immediately suspect and arbitrary."

Candidates - Residency Requirements

Slocum v. DeWitt, 374 So.2d 755 (La. Ct. of App. 1979)

Appellant brought suit against a candidate for state representative on the grounds that the candidate had not been domiciled in the legislative district from which he sought election for the required one year preceding his qualifying as a candidate.

Evidence showed that the defendant's occupation for the past fifteen years had been farming and that a farm was leased four years previously (within the legislative district) at which the defendant spent ninety to ninety-five percent of his time; the other part of his time was spent with his wife and children who resided in a home at another address. However, evidence also showed that the defendant received most of his important mail at his wife's address and his driver's license indicated this same address.

The court held that a preponderance of the evidence established that the defendant was actually domiciled in the relevant legislative district for the required full year preceding his qualifying as a candidate. Even though a person may have more than one residence, he may have only one domicile.

Candidates - Statement of Qualifications

Loza v. Panish, 102 Cal. App.3d 821 (Ct. of App. 1980)

In this case, a proceeding was brought for a writ of mandamus, submitted under sec. 10012 of the Elections Code, to compel the county legislature to reject any candidate's qualifications statement which contains any reference to anything other than the candidate's own education and qualifications. The case was

brought after the registrar-recorder of Los Angeles County accepted two candidate's qualification statements in 1978 which included remarks in addition to the candidates' qualifications. Petition for writ of mandamus was denied by the trial court and the plaintiff appealed.

Relying on Wilson v. Superior Court, 13 Cal.3d 652 (1975), 532 P.2d 116 (1975), the court of appeals affirmed the trial court's decision, holding that under sec. 10012 of the Elections Code, a candidate's qualifications statement may include information which goes beyond a candidate's own education and qualifications. The court also held that the portion of sec. 10012 giving the clerk the authority to reject a candidate's statement which contains libelous or offensive language is in violation of the constitutional right of freedom of expression under both the Federal and State Constitutions.

Corrupt Practices - Public Officials' Ethics Law

Pennsylvania State Association of Township Supervisors v. Thornburgh, 405 A.2d 614 (Pa. Commw Ct. 1979)

Petitioners filed a petition asserting that the Public Officials' Ethics Law, 65 P.S. sec. 401 et. seq., violated various provisions of the Pennsylvania and U.S. Constitutions and sought a decree declaring the Act unconstitutional, void and unenforceable. The petitioners alleged that the Act denied them due process and equal protection of the law, infringed on their right to serve in public office, was vague and overbroad, infringed on their rights of privacy and freedon from unreasonable searches, unlawfully discriminated against married persons and provided for an unconstitutional exercise of the power of appointment.

The court held that the Act does not unlawfully discriminate against local officials nor does the Act possess any of the constitutional infirmaties alleged by the petitioners, See Snider v. Shapp - Pa. Commw. - A.2d - (No. 55C.D. 1979). The court also held that section seven of the Act, which authorizes the commission to establish rules and regulations to carry out the provisions of the Act, to issue advisory opinions respecting an individual's duties under the Act, to conduct investigations and hold hearings does not unconstitutionally delegate legislative authority.

Corrupt Practices - Timely Removal from Office

Slawik v. Folsom, 410 A.2d 512 (Del. 1979)

Plaintiff brought suit to recover damages for wrongful removal from the office of county executive. The superior court held that the plaintiff was "convicted" at the time of removal and that he was not wrongfully removed from office. Summary judgment was granted for the defendants and plaintiffs appealed.

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REPORTS

MONTHLY FILING

During October 1980, political committees reporting on a monthly basis must file a 12-day pre-general election report in addition to a monthly report covering September activity. These committees are **not** required to file monthly reports for November and December 1980, and January 1981. The filing schedule for October 1980 through January 1981 is:

Report Due	Filing Date	Coverage Dates 1980
October 20 Monthly	October 20, 1980	9/1 - 9/30
12 Day Pre-General	October 23, 1980	10/1 - 10/15
30 Day Post-General	December 4, 1980	10/16 - 11/24
Year End	January 31, 1981	11/25 - 12/31

OPINIONS

ADVISORY OPINION REQUESTS

Advisory Opinion Requests (AOR's) pose questions on the application of the Act or Commission Regulations to specific factual situations described in the AOR. The following chart lists recent AOR's with a brief description of the subject matter, the date the requests were made public and the number of pages of each request. The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR	Subject	Date Made Public	No. of Pages
1980-87	Expenditures by subordinate party committee for 1980 Republican Presidential ticket.	7/22/80	1
1980-88	Personal services donated to Presidential campaign committee.	7/24/80	1
1980-89	Beverages and food donated to Congressman's district office receptions.	7/29/80	1
1980-90	Presidential candidates' participation in televised public affairs program produced and distributed by corporation.	7/31/80	5
1980-91	Combined billing notice and contribution solicitation of separate segregated fund of membership organization.	8/1/80	2
1980-92	Corporate and foundation support for nonprofit, nonpartisan organization's voter registration drives.	8/7/80	24
1980-93	Candidate's distribution of coin as campaign item.	8/13/80	1
1980-94	Essay contest sponsored by candidate's campaign committee.	8/13/80	1
1980-95	National bank's contribution to fund supporting amendments to state constitution.	8/13/80	19
1980-96	Post-election public funding for independent Presidential candidate.	8/13/80	52
1980-97	Pre-election donations to Presidential transition committee.	8/18/80	5
1980-98	Name of national bank's separate segregated fund.	8/19/80	20
1980-99	Reporting multiple contributions from one contributor.	8/19/80	2
1980-100	Separate segregated fund for corporation wholly owned by foreign nationals.	8/20/80	4

ALTERNATE DISPOSITION OF ADVISORY OPINION REQUESTS

- In response to **AOR 1980-66** (voter registration activities conducted by a nonpartisan, nonprofit association and a corporation), the General Counsel informed the requester in a letter issued July 3, 1980, that the Commission had failed to approve an advisory opinion by the requisite four-vote majority.
- **AOR 1980-73** was withdrawn by its requester on August 20, 1980.

The RECORD *is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: Max L. Friedersdorf, Chairman; John Warren McGarry, Vice Chairman; Joan D. Aikens; Thomas E. Harris; Frank P. Reiche; Robert O. Tiernan; J.S. Kimmitt, Secretary of the Senate, Ex Officio; Edmund L. Henshaw, Jr., Clerk of the House of Representatives, Ex Officio. For more information, call 202/523-4068 or toll-free 800/424-9530.*

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ADVISORY OPINIONS: SUMMARIES

An Advisory Opinion (AO) issued by the Commission provides guidance with regard to the specific situation described in the AOR's. Any qualified person who has requested an AO and acts in accordance with the opinion will not be subject to any sanctions under the Act. Other persons may rely on the opinion if they are involved in a specific activity which is indistinguishable in all material aspects from the activity discussed in the AO. Those seeking guidance for their own activity, however, should consult the full text of an AO and not rely only on the summary given here.

AO 1980-33 and Supplement: Trade Association's Nonpartisan Voter Drive

The National Association of Realtors (the Association), a nonprofit, incorporated trade association, may finance voter registration and get-out-the-vote programs directed to both Association members and the general public.

Program for Members. The Association may make either partisan or nonpartisan communications to its members through phone banks. 11 CFR 114.3(c)(3), 114.7(h) and 114.8(h). It may also distribute voting materials prepared by election officials. 11 CFR 114.4(c)(2).

Program for General Public. With regard to four radio announcements submitted for Commission approval, the Association may transmit three to the general public. These three transcripts, which urge voter registration, satisfy the criteria that the Commission applied to a newspaper advertisement in AO 1980-20:

1. The communications lack any suggestion that a person designate a political party preference when registering to vote;
2. The communications do not appeal to any identifiable group to ensure their political well-being; and
3. By appealing to the general public in a radio broadcast, the Association has not tried to determine the political preference of the audience.

The fourth communication (considered in the Supplement to AO 1980-33) also satisfies the nonpartisan criteria, but differs from the other three in its suggestion that the public obtain registration information at the real estate offices of certain Association members. The Association may use this transcript in communications with the general public, provided the information supplied by the realtors is prepared by local election officials for distribution to the general public and is distributed in a nonpartisan manner, without endorsing, supporting or promoting registration with a particular party. 11 CFR 114.4(c)(2).

Eight proposed get-out-the-vote announcements, encouraging voting rather than registration, also meet the three nonpartisan criteria set out in AO 1980-20 and summarized above. One of these announcements, however, which suggests that the public obtain absentee voting information at realtor offices, may be used only if it also complies with the provisions of 11 CFR 114.4(c)(2).

Commissioners Robert O. Tiernan and Thomas E. Harris filed dissenting opinions. (Opinion/Date Issued: June 2, 1980; Length: 8 pages, including dissenting opinions: Supplement/Date Issued: August 6, 1980; Length: 6 pages)

AO 1980-50: Corporate Payment of Expenses in Connection with Separate Segregated Fund

The United Merchants and Manufacturers, Inc. (the Corporation) may pay for certain expenses relating to a meeting that would introduce executive and administrative personnel to the Corporation's separate segregated fund (UM&M PAC).

At the proposed breakfast or luncheon meeting, the UM&M PAC directors would discuss the PAC's structure, philosophy and purpose, and would explain the contribution mechanisms available to solicitable employees, though contributions would not be collected at the meeting. The cost of food and transportation to the meeting would range from $9 to $22 per employee. The corporation may pay these expenses since they are incurred in establishing, administering and soliciting contributions to a separate segregated fund. 11 CFR 114.1(b). Because the meeting would not impart a prize or entertainment benefit to the employee, UM&M PAC need not reimburse the corporation for the meeting's expenses.

The Commission could not reach agreement on the question of whether the Corporation's payment of employee salaries for time spent traveling to and attending the meeting would be considered a cost of establishing, administering and soliciting contributions to a separate segregated fund, or whether the payment would constitute a prohibited corporate expenditure. If UM&M PAC were to hold the meeting on a non-working day, however, the question would not arise. Commissioner Joan D. Aikens filed a dissenting opinion. (Date Issued: July 11, 1980; Length: 5 pages)

AO 1980-59: Corporate Funds Donated to Defray Administrative Costs of Trade Association's Separate Segregated Fund

The Lawyers Title Insurance Company (LTIC), a corporation, may donate funds to an account maintained by the American Land Title Association (ALTA), a trade association, to defray the administrative and solicitation expenses of ALTA's separate segregated fund, the Title Industry Political Action Committee. Because the Act exempts administrative and solicitation expenses from the definition of "contribution" or "expenditure," LTIC may make this donation to ALTA (in addition to its membership dues) without violating the Act's prohibition on corporate contributions. 2 U.S.C. §441(b)(2)(C) and §431(8)(B)(vi) and 9(B)(v). Commissioners Thomas E. Harris and Robert O. Tiernan filed a dissenting opinion. (Date Issued: July 11, 1980; Length: 3 pages, including dissenting opinion)

AO 1980-65: Solicitation Authorization Published in Trade Association Magazine

The National Tire Dealers and Retreaders Association (NTDRA) may publish an authorization form in its bimonthly magazine, *Dealer News,* which requests authorization from member corporations to solicit their personnel. The form proposed by NTDRA must, however, be revised to adequately explain the purpose and use of the form.

Although the *Dealer News* is distributed to both NTDRA members and nonmembers (nonmembers may not be

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solicited under the Act), an authorization request could be published because it would not be considered a solicitation for contributions. Instead, the publication of the request form would be considered a method of obtaining approval from NTDRA's corporate members to solicit their stockholders, executive and administrative personnel and their families.

However, the authorization request, as proposed, is not sufficiently specific in stating its purpose. To meet the requirements of FEC Regulations and to avoid an improper solicitation of nonmembers, the form must make clear that: 1) only corporate members of NTDRA may approve the solicitation; 2) approval may not be given if the corporation has already approved a solicitation by another trade association during the year; and 3) a corporation which is not already a member will not become a member by signing and returning the authorization form. 11 CFR 114.8(d)(3). (Date Issued: July 29, 1980; Length: 4 pages)

AO 1980-67: Notices on Invitations; Contributions by Spouses

Authorization/Nonauthorization Notice. Invitations to receptions hosted on behalf of the Russell B. Long Committee (the Committee) do not require a disclaimer notice stating who authorized and paid for the invitations Although the primary purpose of the receptions is to gain support for Senator Long's campaign for the Senate, and those invited may be solicited for contributions at the reception, a disclaimer notice is not required because the invitations will not include any statement which expressly advocates the election of Senator Long or any statement which specifically solicits contributions (or mentions the possibility of soliciting contributions) to his campaign.

Contributions by Spouses. If a check contributed to the Committee is to count as a contribution from husband and wife, both individuals must sign either the check or an accompanying letter which specifies what portion of the contribution is to be attributed to each. 11 CFR 100.7(c) and 104.8(d). If not so attributed, the entire amount of the check is considered a contribution from the person signing the check. This requirement applies regardless of the property laws of the state where the contributors reside.

A portion of a contribution drawn on a partnership account may not be attributed to a spouse of a partner, unless the spouse is also a member of the partnership. (Date Issued: August 12, 1980; Length: 5 pages)

AO 1980-68: Contributions to Runoff Campaign

The Zell Miller for U.S. Senate Committee (the Committee) may, before the primary election takes place, establish an escrow account (or authorize a separate campaign committee) to accept contributions for a possible runoff election in Georgia. Moreover, the Committee may accept contributions for the runoff election from persons who have contributed up to $1,000 to Mr. Miller's primary campaign. However, these contributions must be returned to the donors if Mr. Miller does not run in the primary runoff. 11 CFR 102.9(e).

The Commission did not express an opinion on the Committee's acceptance of post-dated checks. (Date Issued: July 11, 1980; Length: 3 pages)

AO 1980-69: Solicitation Form Used by Labor Union's Separate Segregated Fund

The 101 Political Fund (the Fund), the separate segregated fund of the Hoisting and Portable Engineers Local Union 101 (the Union), may use a solicitation form that, when signed by a union member, authorizes the Fund to deduct a portion of the member's Vacation Fund. The Vacation Fund consists of payments made by the member's employer.

In a previous advisory opinion requested by the Fund on the permissibility of this solicitation system (AO 1979-60), the Commission concluded that the Vacation Fund could be used as a source of voluntary contributions to the Fund because it was maintained as an escrow account separate from the Union's treasury funds. Modified to reflect that advisory opinion, the new authorization form states that the amount to be deducted from the Vacation Fund (five cents per hour worked) is only a **suggested** amount and that a member may authorize an amount more or less than five cents per hour. Further, the revised form states that the Union will not favor or discriminate against a member based on the amount contributed to the Fund or based on a decision not to contribute. 11 CFR 114.5(a)(2). (Date Issued: July 24, 1980; Length: 4 pages)

AO 1980-70: Purchase of Materials from Independent Expenditure Committee

The Committee for Independent Expenditures for Republicans (the Committee) is a political committee which intends to make independent expenditures on behalf of several federal candidates during the 1980 general elections. The Committee may sell campaign materials it produces to an individual who intends to use the materials to make his own independent expenditures. The individual must observe the following guidelines:

1. The individual may publish advertisements purchased from the Committee without disclosing the name of the Committee. These advertisements must, however, disclose the individual's full name as well as a statement that the advertisement is **not** authorized by any candidate or candidate's committee. 2 U.S.C. §441d.
2. The individual may make contributions of up to $5,000 to the Committee during 1980. 2 U.S.C. §441a(a)(1)(C). However, funds spent to purchase campaign materials from the Committee are considered contributions to the Committee and count against the $5,000 limit.

In addition, the individual may make independent expenditures in his own name (from personal funds) while acting as an officer of the Committee. (Date Issued: August 11, 1980; Length: 4 pages)

AO 1980-71: Notices Required for Corporate Employee Solicitations

The Oak Industries, Inc. Political Action Association (the Association), the separate segregated fund of Oak Industries, Inc., is not required to include a disclaimer notice on literature used to solicit contributions from the corporation's stockholders and their families and its executive or administrative personnel and their families. Since the disclaimer notice is required only for communications directed to the general public, and since Commission Regulations prohibit corporate separate segregated funds from soliciting the general public, the disclaimer notice would not apply to the Association's solicitation literature. 2 U.S.C. §441d and §441b(b)(4)(A)(i).

Although the 1979 Amendments to the Act repealed the requirement for a notice stating that a copy of a separate segregated fund's report was available for purchase from the FEC, the Association may continue to use the notice if it so desires. (Date Issued: July 29, 1980; Length: 2 pages)

AO 1980-72: Law Partnership's Political Contribution Plan

The law firm of Kilpatrick and Cody (the Partnership) may pay costs of establishing and operating a voluntary political contribution plan for its members without registering and reporting as a political committee provided the partnership does not spend in excess of $1,000 to undertake certain activities that would "influence federal elections." Under the proposed contribution plan, each member of the partnership who wished to contribute to candidates for public office would establish a special bookkeeping account with the partnership. By writing a personal check, the partner could withdraw personal funds from this account to make contributions to the candidate or political committee of his/her choice. Any special account funds not contributed would be refunded at the end of the year to the individual who had set the funds aside. The partnership's bookkeeper would maintain records of the special accounts, as well as any contributions from the accounts, at a negligible cost to the partnership.

The costs incurred by the partnership in establishing and maintaining the contribution plan would not constitute "expenditures" because their purpose is not to influence federal elections. Rather, the purpose of the plan is to "facilitate the management of personal funds of participating partners." Moreover, the partnership indicates no

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REGULATIONS

STATUS OF FEC REGULATIONS

Regulations*	Date Sent to Congress	Federal Register Publication	Date Prescribed** by the Commission
11 CFR 9033.9 Suspension of Primary Matching Fund Payments	4/10/80	4/15/80 (45 FR 25378)	7/3/80
11 CFR Part 4 Public Records and the Freedom of Information Act	Not applicable	5/13/80 (45 FR 31291)	6/12/80
11 CFR Part 5 Access to Public Disclosure Division Documents	Not applicable	5/13/80 (45 FR 31292)	6/12/80
11 CFR, Parts 100 and 110 Contributions to and Expenditures by Delegates to National Nominating Conventions	5/14/80	5/23/80 (45 FR 34865)	8/7/80
11 CFR, Parts 100, 106, 110, 140-146 and 9001-9007 Public Financing of Presidential General Election Campaign	6/13/80	6/27/80 (45 FR 43371)	Congressional approval pending

*The chart is cumulative, listing all amendments to the FEC Regulations proposed after the 1980 edition of 11 CFR was published, including any technical amendments.

**The Commission may prescribe its regulations 30 legislative days after it has transmitted them to Congress, provided neither the House nor the Senate disapproves them during this period.

intention to create a political committee since the member's decision to contribute funds to a candidate would be an individual, not a group, decision.

The proposed contribution program would become a political committee, however, if the partnership spent more than $1,000 to influence federal elections. An attempt to influence elections would occur if:

1. The partnership distributed information within the firm which identified partners participating in the plan, the amounts of their contributions and the candidates to whom they contributed.
2. Participation in the plan was conditioned on a formal or informal agreement to make, or to refrain from making, contributions to any particular candidate or class of candidates.
3. The program included any arrangement whereby several contributions for the same candidate would be accumulated and collectively forwarded to the candidate. (Date Issued: August 12, 1980; Length: 3 pages)

AO 1980-74: Labor Organization's Membership Solicitation Program

Operating Engineers Local 37 (Local 37) may use a proposed solicitation plan, provided that Local 37 modifies its contribution authorization form to indicate how the member can contribute an amount other than that suggested by the union. Under the proposed solicitation program, a member of the Local voluntarily signs an authorization card permitting the deduction and transfer of funds from his or her Vacation Fund to the separate segregated funds established, respectively, by the national labor organization of which Local 37 is a member and by a labor federation with which the national labor organization is affiliated. The Vacation Fund is a permissible source of voluntary contributions because it consists of funds earned by union members and does not include funds commingled with union treasury monies or funds required as a condition of employment or union membership.

The proposed deduction authorization/card is acceptable because it contains a clear statement informing contributors of the political purpose of the funds and assurances that the contribution guidelines are merely suggestions and the union will not penalize anyone because his/her contribution is too small or because he/she decides not to contribute at all. However, the form must be revised to indicate the contributor can contribute an amount other than that suggested by the authorization form.

The Commission noted that Commission Regulations governing joint fundraising and tranfers of contributions between affiliated committees also apply to the solicitation program. 11 CFR 102.6, 102.8 and 103.3. (Date Issued: August 12, 1980; Length: 3 pages)

AO 1980-75: National Trade Association's Solicitation of "Designated" Members

The National Restaurant Association (NRA), a national trade association, must obtain written approval from its member corporations **before** soliciting contributions to its separate segregated fund from employees who have been designated by these corporations as individual NRA members.

Under NRA's membership policy, a member organization may designate its executive and administrative employees as individual members of NRA. The corporate member "transfers portions of its membership rights" to the individual it designates as a member. It may also pay the annual NRA dues of the designated member. While the individuals designated as NRA members are entitled to all the rights and benefits accorded to individuals who obtain membership by initiating their own application, the designated members enjoy these rights and benefits solely by virtue of their employers' membership in NRA. In effect, the designated member acts as a representative of his or her employer in the exercise of membership rights. NRA would, therefore, be precluded from soliciting these individuals without prior approval by their corporate employers. 11 CFR 114.8. By contrast, under 11 CFR 114.7, NRA could directly solicit noncorporate individual members who had independently applied for membership. Commissioner Joan D. Aikens and Chairman Max L. Friedersdorf filed a dissenting opinion. (Date Issued: August 18, 1980; Length: 8 pages, including dissenting opinion)

AO 1980-76: Fees for Regular Radio and Television Appearances

Fees received by Senator William Proxmire for regular appearances on a monthly radio program and a weekly television program do not count against his $25,000 per year honorarium limit. The fees are considered "stipends" under Commission Regulations – as distinct from "honoraria" – because they constitute "payment for services on a continuing basis, including a salary or other compensation paid by news media for commentary on events other than the campaign of the individual compensated." 11 CFR 110.12(c)(3).

The Commission expressed no opinion on the application of tax laws and Senate rules to the stipends. (Date Issued: August 1, 1980; Length: 2 pages)

AO 1980-78: Use of Campaign Finance Information in Candidate's Solicitation Letter

Using information obtained from disclosure reports filed with the FEC, Senate candidate Don L. Richardson may, in a solicitation letter, publish the total disbursements made by candidates in previous elections. Since the letter would not disclose the identity of contributors, use of this information would not be prohibited by 2 U.S.C. §438(a)(4) or 11 CFR 104.15. (Dated Issued: August 12, 1980; Length: 2 pages)

AO 1980-79: Name of Independent Expenditure Committee Advocating Presidential Candidate's Defeat

Mr. Brad Sherman may not use the name "Americans Against Reagan" for a proposed political committee which would be "totally independent of any other political committee, candidate or political party" and which would advocate the defeat of the Republican nominee in the general election. Under the Act and Commission Regulations, any political committee which is not authorized by a candidate may not include the name of any candidate in its title. 2 U.S.C. §432(e)(4) and 11 CFR 102.14(a). (Date Issued: August 1, 1980; Length: 2 pages)

AO 1980-80: Separate Campaign Committees for Special and Primary Elections

Mr. George W. Crockett may use the principal campaign committee established for his Congressional primary election to campaign in a special election held on the same date to fill the same Congressional seat. Since the two campaigns would be for different terms of the same office, Mr. Crockett would not be subject to 11 CFR 110.8(d)(1), which requires a candidate to designate separate campaign committees when running "for more than one Federal office." (Date Issued: July 11, 1980; Length: 2 pages)

THE LAW IN THE COURTS

DISTRICT COURT DISMISSES MOTT VS. FEC

On June 30, 1980, the United States District Court for the District of Columbia dismissed a suit in which Stewart R. Mott, Rhonda K. Stahlman and the National Conservative Political Action Committee (NCPAC) had sought declaratory and injunctive relief against the FEC. In its motion to dismiss the suit (*Mott et al.* v. *FEC*, Civil Action No. 79-3375), the FEC argued that some of the claims presented in the suit were not ripe for consideration by the Court while others failed to state a claim on which relief could be granted. In its role as *amicus curiae*, Common Cause had also filed a brief arguing dismissal of the suit.

Plaintiffs had challenged the constitutionality of provisions of the Act, FEC Regulations, advisory opinions and other written interpretations which regulate independent political activity by prescribing limits on contributions from individuals, groups and political committees to other individuals, groups and political committees which make independent expenditures. Plaintiffs claimed that these provisions define the terms "contribution" and "expenditure" in overly broad and vague language.

Mr. Mott proposed that, together with other "like-minded individuals," he would purchase advertising space in *The New York Times* to express his views on political issues and expressly advocate the election or defeat of several clearly identified federal candidates. Specifically, he claimed that the First Amendment rights of those purchasing the ad would be restricted by provisions of the Act illegally requiring that:

1. This group of individuals register with the FEC as a political committee when their expenditures for the advertising exceed $1,000; and
2. The amount spent in the joint advertising purchase count against the limits imposed on individual contributions to political committees.

The District Court determined that the constitutional issues raised by Mr. Mott were not ripe for judicial decision in the absence of a more fully developed factual record. The claim that Mr. Mott wished to "join with others" in purchasing the advertising was broad enough to encompass a single purchase of advertising space as well as a series of advertisements and solicitations by a full-fledged political committee. Further, the Court noted that Mr. Mott should have requested an advisory opinion from the FEC on the application of the Act to this proposed activity **before** seeking a review by the Court.

Both NCPAC and Ms. Stahlman challenged the constitutionality of limits on contributions by individuals to political committees which make independent expenditures. Ms. Stahlman's and NCPAC's claims raised three constitutional issues:

1. Whether the definition of "contribution" in 2 U.S.C. §431(8) abridges First Amendment rights since it limits contributions which individuals may make to political committees undertaking independent expenditures;
2. Whether 2 U.S.C. §441a(a)(3), which limits total contributions by an individual within any calendar year to $25,000, is unconstitutional under the First and Fifth Amendments; and
3. Whether 2 U.S.C. §441a(a)(1)(c), which limits contributions by a person to a political committee to $5,000 in any calendar year, is unconstitutional under the First and Fifth Amendments.

The District Court pointed out that, in the *Buckley* v. *Valeo* decision, the Supreme Court had upheld the constitutionality of the contribution limits. (*Buckley* v. *Valeo*, 424 U.S. 1 at 38 (1976)). The District Court said that, although the Supreme Court had not specifically addressed the $5,000 limit on individual contributions to political committees, its "reasoning . . . clearly indicated that the restriction is constitutional." The Supreme Court had reasoned that a limit on contributions infringed far less on First Amendment rights than did a limit on expenditures, because the contribution limits involved restrictions on indirect, rather than direct, political expression. Further, whatever infringement did occur was justified by the need to curb the "actuality and appearance of corruption" flowing from large individual contributions. (*Buckley* v. *Valeo*, 424 U.S. 1 at 26 (1976))

continued

FEC PUBLIC APPEARANCES

In keeping with its objective of making information available to the public, the Commission regularly accepts invitations to address public gatherings. This column lists upcoming scheduled Commission appearances, the name of the sponsoring organization, the location of the event and the name of the Commission's speaker. For additional information on any scheduled appearance, please contact the **sponsoring organization.**

9/5 Pennsylvania Election Officials
Harrisburg, Pennsylvania
Commissioner Joan D. Aikens

9/24 Northeast City and Town Clerks
Chatham, Massachusetts
Vice Chairman John Warren McGarry

FELICE M. GELMAN AND CITIZENS FOR LAROUCHE, INC. VS. FEC

On July 22, 1980, the U.S. Court of Appeals for the District of Columbia Circuit issued an opinion affirming the FEC's determination that Lyndon H. LaRouche had failed to reestablish his eligibility for primary matching funds in the Democratic Presidential primary held in Michigan on May 20, 1980. In its May 28, 1980, ruling, the Commission found that Mr. LaRouche had failed to receive at least 20 percent of all votes cast for Democratic contenders in the Presidential primary, the minimal amount necessary to reestablish eligibility.

Felice M. Gelman and Citizens for LaRouche, Inc. had filed a petition on June 11, 1980, contending that the Commission should have applied the definition of "candidate" provided by 26 U.S.C. §9033(2) in determining whether Mr. LaRouche had reestablished his eligibility for primary matching funds. That provision stipulates that, for purposes of establishing **initial** eligibility for primary matching funds, a Presidential primary candidate must be "actively conducting campaigns in more than one State." In calculating total votes in the Michigan Democratic primary, Mr. LaRouche argued, this definition of "candidate" would have excluded votes cast for a candidate who had ceased to campaign actively in more than one state and votes cast for "uncommitted" delegates (i.e., those not pledged to any specific candidate). The FEC argued that the provisions of 26 U.S.C. §9033(c)(4)(B) required the Commission to count total votes cast for **all** Presidential primary candidates in a particular primary – including all votes cast for inactive or write-in candidates or "uncommitted" delegates.

In upholding the FEC's method of determining Mr. LaRouche's reeligibility for primary matching funds, the Court maintained "... petitioners' narrow focus on the word 'candidate', to the exclusion of the phrase within which that word appears, results in a strained and artificial construction that is at odds with the Act's underlying concern that federal matching funds should go only to those candidates who have demonstrated at least minimal public support for their candidacies."

LITIGATION STATUS INFORMATION

The following is a list of new litigation involving the Commission, together with the date the suit was filed, the court involved, the docket number and a brief description of the major issue(s) involved in the case. Persons seeking additional information on a particular case should contact the court where the suit is filed or the Commission.

John B. Anderson et al. v. FEC, U.S. District Court for the District of Columbia, Docket No. 80-1911, July 31, 1980.

Pursuant to 26 U.S.C. §9011(b)(2), plaintiffs seek prompt convening of a three-judge court to rule that John B. Anderson is entitled to the same post-election public funding for the 1980 Presidential general election as that provided Presidential candidates of "new parties" by the Presidential Election Campaign Fund Act (the Fund). Plaintiffs also seek a declaratory judgment from the Court that, to the extent the Fund does not provide post-election funding for independent candidates, the Fund violates First and Fifth Amendment rights. Plaintiffs further seek an injunction requiring the FEC to grant post-election public funding to Mr. Anderson, provided he submits the agreements and certifications required under the Federal Election Campaign Act and receives five percent or more of the popular vote in the 1980 Presidential general election.

Common Cause et al. v. Harrison Schmitt et al. and Federal Election Commission (Intervening Defendant), U.S. District Court for the District of Columbia, Docket No. 80-1609: FEC Motion to Intervene (July 11, 1980); FEC Motion to Dismiss (July 21, 1980).

On July 1, 1980, Common Cause and others filed suit against Americans for Change (an independent expenditure committee), Harrison Schmitt (committee chairman) and Carl T. Curtis (committee treasurer). Common Cause alleged defendants had made (or were about to make) independent and coordinated expenditures in violation of 26 U.S.C. §9012(f), which prohibits expenditures by unauthorized political committees in excess of $1,000 on behalf of a publicly funded Presidential nominee of a major party.

On July 11, 1980, the FEC filed a motion to intervene as defendant in *Common Cause et al. v. Harrison Schmitt et al.* (Civil Action No. 80-1609). FEC sought dismissal of the suit on grounds that it had exclusive jurisdiction over civil enforcement of violations alleged in the suit (2 U.S.C. §§437c(b)(1) and 437g) and that plaintiffs lacked standing to bring suit. On August 5, 1980, the Court granted the FEC's motion to intervene.

On July 15, 1980, the FEC filed its own suit against Americans for Change and two other political committees (see below).

FEC v. Americans for Change, Americans for an Effective Presidency and Fund for a Conservative Majority, U.S. District Court for the District of Columbia, Docket No. 80-1754, July 15, 1980.

Pursuant to 26 U.S.C. §§9011(b)(2) and 9010(c), FEC seeks expedited review by a three-judge district court of certain provisions of the Presidential Election Campaign Fund Act. Specifically, the FEC seeks the Court's declaratory judgment that: 1) expenditures defendants propose to make on behalf of a publicly funded Presidential nominee of a major party are in violation of 26 U.S.C. §9012(f)(1) and 2) 26 U.S.C. §9012(f)(1), which limits expenditures made by unauthorized political committees on behalf of a Presidential nominee receiving public funds, is constitutional as applied to defendants' expenditures.

Carter Mondale Reelection Committee, Inc. et al. v. FEC, U.S. Court of Appeals for the District of Columbia Circuit, Docket No. 80-1842, July 24, 1980.

Plaintiffs sought a stay from the Appeals Court that would prevent FEC certification of the Republican Presidential nominee's eligibility for public funds pending resolution of an administrative complaint filed by plaintiffs against the nominee and other parties. On July 24, 1980, the Appeals Court denied plaintiffs' motion for a stay.

800 LINE

SUPPORT FOR PUBLICLY FUNDED PRESIDENTIAL CANDIDATES

The Office of Public Communications has received many inquiries about how individuals, political parties, corporations and unions may support Presidential candidates who accept public financing for their general election campaigns. The following information responds to some of these questions.

What may an individual do to support the Presidential candidate of his or her choice?

Individuals may **not** make direct contributions to major party candidates who accept public funding. They may, however, make direct contributions of up to $1,000 to any other type of Presidential candidate, including a minor or new party candidate who accepts partial or retroactive public funding. In addition, an individual may support the Presidential candidate of his or her choice by:

- Contributing up to $1,000 to the candidate's compliance fund.*
- Contributing up to $5,000 to a state or local party committee which may, in turn, make certain disbursements that may benefit the Presidential nominee.
- Contributing up to $20,000 to the national committee of the candidate's political party,** which may, in turn, make "coordinated party expenditures" on behalf of the Presidential nominee.
- Making his or her own independent expenditures to advocate the candidate's election (or to oppose the election of another Presidential candidate), provided the expenditures are not made "with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate." 11 CFR 109.1(a). The individual making "independent expenditures" must report them when they exceed $250 per calendar year. 11 CFR 109.2(a).
- Volunteering his or her services (not compensated by anyone) to the candidate's campaign or to the candidate's political party. 11 CFR 100.7(b)(3).
- Conducting a campaign activity on behalf of the nominee in his/her home, or in a church or community room used on a regular basis by members of the community for noncommercial purposes. Costs of invitations, food and beverages provided by the volunteer may not, however, exceed $1,000. 11 CFR 100.7(b)(5) and (6), 100.8 (b)(6) and (7).
- Traveling on behalf of the candidate, provided the costs for travel do not exceed $1,000. 11 CFR 100.7(b)(8) and (9).

What role may a Presidential candidate's political party play in supporting the candidate if he or she accepts public funding?

The **National Party committee or its agents** may make special "coordinated party expenditures" to promote the election of its Presidential nominee in the general election. These expenditures are subject to a spending limit based on the national voting age population ($4,637,653.76 in 1980). Although these expenditures may be made in cooperation with the candidate, the party committee – not the candidate – is responsible for actually making and reporting them. (See 11 CFR 110.7.)

The **state and local party committees** may engage in certain activities that also benefit the Presidential nominee. They may, for example, produce certain campaign materials (e.g., pins and bumper stickers) which are used in connection with volunteer activities. Or, they may distribute a sample ballot identifying the nominee and conduct voter registration and get-out-the-vote drives on behalf of the nominee. All such activities are subject to specific provisions of the Act and FEC Regulations. 11 CFR 100.7(b)(9) and (15).

May corporations and labor organizations issue communications that support Presidential candidates in the general election?

Yes. Corporations and labor organizations may engage in certain partisan and nonpartisan communication activities which support Presidential candidates – regardless of whether the candidates accept public funding for their general election campaigns. These activities are subject to the specific requirements of Commission Regulations. (See 11 CFR Part 114.)

Partisan Communications. Corporations and labor organizations may expressly advocate the election or defeat of Presidential candidates, for example, by publishing printed materials or setting up a phone bank on behalf of a candidate. In the case of a corporation, these communications must be limited to the corporation's stockholders, executive and administrative personnel and their families. In the case of labor organizations, partisan communications must be limited to the labor organization's membership and their families. 11 CFR 114.3. Moreover, expenditures for these internal communications may be reportable. 11 CFR 100.8(b)(4).

Nonpartisan Communications. Corporations and labor organizations may also sponsor certain nonpartisan communi-

continued

*A publicly funded Presidential candidate may establish a separate Legal and Accounting Compliance Fund to pay costs of complying with the Act. Contributions to the fund are subject to the limits and prohibitions of the Act. See 11 CFR 9003.3(a).

**Total contributions by individuals in connection with federal elections may not exceed $25,000 per year.

cations made to the general public, provided these communications meet the requirements of Commission Regulations. 11 CFR 114.4. For example, in assisting a nonpartisan civic or nonprofit organization, a corporation or labor organization may jointly sponsor nonpartisan registration and get-out-the-vote drives directed to the general public.

May corporations or labor organizations pay for legal and accounting services rendered to a Presidential campaign?

Yes. Corporations and labor organizations (as well as partnerships) may pay for **legal and accounting services** rendered by their regular employees to Presidential candidate committees, provided the services are rendered solely to ensure compliance with the Act. Costs incurred by the regular employer for these services must be reported by the committee in accordance with 11 CFR 104.3(h). 11 CFR 100.7(b)(14).

For a summary of recent revisions to the regulations governing public financing of Presidential general elections, see the August 1980 *Record*, page 1.

PUBLIC FINANCING

FEC CERTIFIES REPUBLICAN GENERAL ELECTION FUNDS

On July 24, 1980, the Commission approved payment of $29,440,000 in federal funds for the general election campaign of Republican Presidential nominee Ronald Reagan and his Vice Presidential running mate, George Bush. Mssrs. Reagan and Bush had requested the funding in a July 18th letter to the Commission. In that letter, the candidates agreed to abide by the overall spending limit, to use only public funds for the campaign and to comply with other legal requirements. They designated the Reagan for President General Election Committee, based in Arlington, Virginia, as the recipient of the funds.

By law, the Presidential nominee of each major party is entitled to full public financing of the general election campaign ($20 million plus a cost-of-living adjustment). Major party candidates accepting public financing for their general election campaigns are subject to a spending limit of $29,440,000 (the amount of the grant). In addition, the use of the nominees' personal funds is limited to $50,000. (All expenditures made by or on behalf of a Vice Presidential candidate are considered to be made on behalf of the Presidential candidate.) Private funds, subject to contribution limits, may be raised and spent for legal and accounting costs solely to ensure compliance with the Act.

As of July 24, 1980, the Commission had also certified $8,832,000 in Presidential nominating convention payments to the Democratic and Republican National Committees ($4,416,000 each), and $29,624,936.78 in Presidential primary matching funds to ten Presidential primary candidates.

STATISTICS

TWO NEW INDEPENDENT EXPENDITURE INDEXES AVAILABLE

Two new FEC computer indexes provide detailed information on independent expenditures advocating the election or defeat of federal candidates. Initiated on July 14, 1980, both indexes are produced on a monthly basis and cover the periods 1977-78 and 1979-80.

One index, a more efficient version of the previous independent expenditure index, indicates on a candidate-by-candidate basis the details of independent expenditures made for or against a candidate as reported by political committees and persons making the independent expenditures. Total independent expenditures for or against each candidate are also shown as well as grand totals for all candidates.

The second index of independent expenditures is completely new. It organizes information on a filer-by-filer basis. For each political committee or person making independent expenditures, the index lists the candidates supported and opposed. This new index is available in two versions: in the summary version, aggregate amounts spent for or against a candidate are shown; in the detailed version, the particulars of each expenditure are displayed. Total figures are also included.

The monthly independent expenditures indexes are available for review in the FEC's Public Records Office. Copies are available at five cents per page. For further information, contact: Office of Public Records, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463 or telephone 202/523-4181 or toll free, 800/424-9530.

FEC REPORTS ON FINANCIAL ACTIVITY OF PRESIDENTIAL PRIMARY CAMPAIGNS

The FEC released summary figures on July 29, 1980, on funds raised and spent by 16 Presidential contenders from the start of their campaigns through May 31, 1980. Each of these campaigns had topped the $100,000 mark in total receipts and expenditures. The figures were part of an ongoing study on the 1980 Presidential primaries entitled *Reports on Financial Activity: Presidential Pre-Nomination Campaigns*. Interim Report No. 7, the most recent installment of the study, indicated that the Presidential candidates had collectively raised $115.6 million in their primary campaigns and spent $111.4 million. Funds raised for their campaigns came from the following sources:

- $67.2 million (58 percent) from private (individual) contributions;
- $25.1 million (22 percent) from federal matching funds;
- $1.3 million (one percent) from nonparty political committees;

- $.5 million (.4 percent) from candidates' personal funds and $.8 million (.7 percent) in loans from candidates to their campaigns; and
- $15.4 million (13 percent) in other loans.

Some of the information contained in the study is presented in the chart below. In those instances where no figures appear, available figures were of minimal value or unverified.

Copies of Nos. 1-7 of the *Reports on Financial Activity* for selected 1980 Presidential candidates are available for purchase ($1.00 per report) from the Public Records Office of the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463; or call 202/523-4181 locally or toll-free 800/424-9530.

PRIMARY ELECTION CAMPAIGNS*

Candidate	Net Receipts	Individual Contributions	"PAC" Contributions	Total Matching Funds Certified as of 5/31/80	Net Disbursements	Expenditures Subject to Limits**
DEMOCRATS						
Brown	$ 3.0	$ 1.7	$ .03	$ .8	$ 2.9	$ 2.0
Carter	16.5	11.8	.43	3.6	16.3	12.1
Kennedy	13.6	6.3	.11	2.9	13.2	8.7
LaRouche	1.6	1.1	---	.5	1.6	1.5
REPUBLICANS						
Anderson	7.0	3.9	.02	2.7	6.5	5.8
Baker	7.9	3.8	.11	2.1	7.8	3.2
Bush	20.5	10.0	.12	5.3	20.4	12.8
Connally	13.0	10.7	.20	0	12.8	N/A
Crane	5.2	3.5	---	1.6	5.2	4.2
Dole	1.5	.9	.04	.4	1.5	1.2
Fernandez	.2	.2	.002	0	.2	N/A
Reagan	24.5	13.0	.20	5.2	22.0	12.6
Stassen	.1	---	0	0	.1	N/A
LIBERTARIANS						
Clark	.7	.3	0	0	.7	N/A
Hunscher	.2	---	0	0	.1	N/A
SOCIALIST WORKERS						
Pulley	.1	.06	0	0	.1	N/A
TOTAL	**$115.6**	**$67.2**	**$1.3**	**$25.1**	**$111.4**	**$64.1**

*Figures given in the chart represent millions of dollars.

**Presidential primary candidates who accept matching funds are subject to both national and state-by-state spending limits. See FEC Regulations at 11 CFR 9035.1.

CLEARINGHOUSE

FEC TESTIFIES ON BILINGUAL STUDY

On July 30, 1980, FEC Chairman Max L. Friedersdorf testified before the House Subcommittee on Civil and Constitutional Rights on the *Bilingual Election Services* study, a multiyear study of bilingual election practices conducted by the University of Mexico under contract to the FEC's Clearinghouse on Election Administration. (See the June 1980 *Record* for a detailed description of the study.)

Chairman Friedersdorf explained that the primary purpose of the study was to provide local election officials with a broad range of ideas and suggestions for designing programs to administer bilingual elections. The study did not, however, attempt to assess the need for or success of the bilingual provisions of the 1975 Voting Rights Act, nor did it measure the effectiveness of such programs.

Volumes I and III of *Bilingual Election Services* are available from the National Technical Information Service, U.S. Dept. of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Identify report numbers (Vol. I, No. PB300432AS, $7.00; Vol. III, No. PB300433AS, $11.00) and enclose a check or money order payable to National Technical Information Service.

Volume II of *Bilingual Election Services* is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20404. Identify report title and GPO stock number (052-006-00007-4). Enclose a check or money order for $3.50, payable to Superintendent of Documents.

SUBSCRIPTIONS TO THE ELECTION LAW UPDATES AND THE ELECTION CASE LAW SERIES

The following publications from the FEC's Clearinghouse are now available on a subscription basis from the Government Printing Office:

- *Election Law Updates* is a quarterly series which summarizes all new state and federal election legislation. The series is cumulative through the year, culminating in an annual summary. It is indexed by topic and state. Subscription price: $11.00 per year.
- *Election Case Law* is a quarterly series which summarizes recent state and federal litigation relating to election matters. The series is cumulative through the year, culminating in an annual summary. It is indexed by topic and case. Subscription price: $10.00 per year.

You may order these subscriptions by mail from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Identify report title. Enclose a check or money order for subscription price(s) payable to Superintendent of Documents. Please do **not** send checks or money orders to the Federal Election Commission.

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RECORD

1325 K Street N.W., Washington, D.C. 20463

Volume 6, Number 10

October 1980

REPORTS

LOCAL PARTY COMMITTEES: REGISTRATION AND REPORTING REQUIREMENTS

During the last week of July 1980, the Commission sent a notice to some local party committees registered with the FEC, informing them that it may be possible for them to stop reporting to the Commission. Those committees that received the notice had **not** made contributions or expenditures exceeding $1,000 per year during 1977-79. The notice alerted the committees to recent amendments to the election law that might affect their status as "political committees."

The notice explained that local party committees are required to register and report with the Commission only if they:

1. Receive contributions in excess of $5,000 a year to influence federal elections; or
2. Make contributions or expenditures in excess of $1,000 a year to influence federal elections; or
3. Make payments, exempted from the definition of contribution or expenditure, in excess of $5,000 a year. These exempted payments are defined by Commission Regulations at 11 CFR 100.7(b)(9), (15) and (17) and 100.8(b)(10), (16) and (18).

NOTE: A local party committee may unknowingly be making "expenditures to influence federal elections" if it transfers funds to a political committee registered with the FEC which, in turn, deposits the funds in an account used for federal elections. Local committees may avoid making this type of "expenditure" if the recipient committee (registered with the FEC) either: 1) deposits the transfer (if not intended for federal elections) in a separate account to be used for nonfederal elections or 2) reports the funds (if intended for federal elections) as contributions from the original donors who actually contributed the funds to the local party committee.

The notice advised that local party committees that did not exceed any of these thresholds could terminate their reporting obligations under the Act. (See the June 1980 *Record* for more detailed information on terminating reporting obligations.) The notice also explained that local party committees would be required to re-register with the Commission if future activity exceeded the registration and reporting thresholds listed above.

REPORTS DUE

During the coming months, several reports are required under the Fedeal Election Campaign Act. The following paragraphs give an overview of the reporting requirements. For detailed information, committees should consult the notices sent to them directly or contact the Office of Public Communications (see below).

Third Quarterly Report

All political committees* (other than monthly filers, see below) must file a quarterly report by October 15 **regardless of the amount of funds received or expended by the committee** during the quarter. (FEC Form 3a, the postcard waiver, is no longer an acceptable filing.) The quarterly report must include all reportable transactions occurring since the last full report filed or (if the committee is new) from the date of registration through September 30, 1980.

Monthly Reports

All committees **not** authorized by a candidate, which file on a monthly basis, must file their monthly report by October 20.

In addition, each principal campaign committee of a Presidential candidate which has received contributions or made expenditures aggregating $100,000 or more (or anticipates doing so) must file the monthly report.

The reports of monthly filers must cover all transactions that occurred between September 1 and September 30, 1980. In the event a monthly report was not filed in September, the report must cover all transactions since the last report filed or (if the committee is new) from the date of registration through September 30.

continued

*For an explanation of who qualifies as a political committee, consult FEC Regulations (11 CFR 100.5).

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NOTE: Committees filing on a monthly basis are **not** required to file monthly reports covering the months of October, November and December. Instead, these committees must file a pre-general election report in October 1980, a post-general election report in December 1980 and a year-end report in January 1981 (see below).

Pre-General Election Reports

Committees authorized by candidates running in the general election are required to file a pre-general election report by October 23. The report must cover all reportable transactions between the last report filed and October 15.

All monthly filers must file a pre-general election report. All other political committees which have made contributions or expenditures on behalf of federal candidates on or before October 15, 1980, and which have not previously reported these transactions, are also required to file a pre-general election report.

Last Minute Contributions

A committee authorized by a candidate that receives a contribution of $1,000 or more between October 15 and November 2 must, within 48 hours, disclose the contribution in writing to the FEC, the Secretary of the Senate or the Clerk of the House, as appropriate. This notification must identify the name of the candidate and the office he or she seeks, the name of the contributor, the amount of the contribution and the date it was received. These contributions are then disclosed as usual on the post-general election report (see below).

Post-General Election Reports

All political committees (except authorized committees of candidates not in the general election) are required to file a post-general election report by December 4, 1980. The report should cover all transactions between the last report filed and November 24, 1980.

Year-End Reports

All political committees must file a year-end (fourth quarter) report by January 31, 1981. The year-end report must include all reportable transactions occurring since the last full report filed or (if the committee is new) from the date of registration through December 31, 1980.

Where Reports Are Filed

Political committees must file their reports with the appropriate federal and state offices. Correct filing procedures are described in the instructions on the back of the reporting forms (Form 3, 3P or 3X).

NOTE: Each authorized committee of a candidate must file its report with the principal campaign committee, which in turn must file a consolidated report on FEC Form 3Z (or 3Pb) with the appropriate federal and state offices.

Reporting Forms

Political committees must use the following forms, with appropriate schedules, to file their quarterly, monthly or pre-general election reports:

1. *Form 3* must be used by all political committees authorized by a candidate for the House or Senate.
2. *Form 3P* must be used by Presidential campaigns.
3. *Form 3X* must be used by all political committees which are **not** authorized by a candidate.

Forms and additional information have been sent to all registered committees. Questions and requests for forms should be addressed to the Office of Public Communications, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463; or telephone 202/523-4068; toll free 800/424-9530.

INFORMATION

FEC EXTENDS HOURS

To accommodate the public's increased need for information during the 1980 general elections, the Commission is extending its office hours between October and election day (November 4).

Information Specialists in the **Office of Public Communications** will be available between 8 a.m. and 8 p.m. (Eastern Standard Time) on weekdays, beginning October 1, to answer calls on the FEC's toll-free line: **800/424-9530**. Individuals may request forms and publications and obtain information needed to comply with the federal election law. When the Office is closed, individuals may still call and leave a message on the recording device. Their calls will be returned on the next business day.

The Office of Public Records will be open from 9 a.m. to 7 p.m. on weekdays, 10 a.m. to 4 p.m. on Saturdays and 12 p.m. to 4 p.m. on Sundays, beginning October 15. Those visiting the office may review and copy campaign finance reports filed by political committees, as well as other documents such as closed compliance cases, statistical summaries of campaign finance reports and computer indexes.

ADVISORY OPINION INDEX AVAILABLE

An updated edition of the Commission's cumulative *Index to Advisory Opinions* is now available. The *Index* includes three parts: a subject index and an index by U.S. Code, both covering all opinions issued from April 1975 through mid-August 1980; and an index by FEC Regulations covering opinions from 1977. In addition, a transfer table indicates numerical changes in the Regulations after enactment of the 1979 Amendments to the Act.

Requests for the *Index to Advisory Opinions* should be addressed to the Public Records Office, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Purchase price (for duplication costs) is $12.75, payable in advance. Checks, made payable to the United States Treasurer, should be sent to the FEC.

OPINIONS

ADVISORY OPINION REQUESTS

Advisory Opinion Requests (AOR's) pose questions on the application of the Act or Commission Regulations to specific factual situations described in the AOR. The following chart lists recent AOR's with a brief description of the subject matter, the date the requests were made public and the number of pages of each request. The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR	Subject	Date Made Public	No. of Pages
1980-101	Publication and sale of political action committee directory using FEC campaign finance information.	8/22/80	1
1980-102	Corporate separate segregated fund's solicitation of family members of executive and administrative personnel.	8/25/80	5
1980-103	State party's distribution to Congressional candidates of funds collected through state tax check-off.	8/25/80	6
1980-104	Local party committee's newspaper ad requesting volunteers for Presidential campaign.	8/27/80	2
1980-105	Authorization/nonauthorization notice for independent expenditure activity.	8/29/80	3
1980-106	Summary of Presidential candidates' positions on issues published by unincorporated association.	9/3/80	4
1980-107	Senior law partner's volunteer services to Presidential campaign.	9/16/80	2

ALTERNATE DISPOSITION OF ADVISORY OPINION REQUESTS

- **AOR 1980-82** was withdrawn by its requester on August 22, 1980.
- **AOR 1980-85** was closed as incomplete in a letter issued by the General Counsel on September 12, 1980.
- **AOR 1980-91** was withdrawn by its requester on August 20, 1980.
- **AOR 1980-104** was withdrawn by its requester on September 9, 1980.

STATUS OF 1980 ADVISORY OPINIONS

Requests for advisory opinions (AOR's) and advisory opinions (AO's) issued by the Commission have substantially increased during the first eight months of 1980. When reading the chart below, keep in mind that an opinion is not necessarily issued in the year it is requested. An opinion requested in December 1979, for example, would not have been issued until 1980.

	1978 (1/1-12/31)	1979 (1/1-12/31)	1980 (1/1-8/31)
AOR's Received	73	52	105*
AO's Issued	60	44	86
AOR's Pending			23

*Thirteen of these AOR's were withdrawn or closed without issuance of an opinion.

ADVISORY OPINIONS: SUMMARIES

An Advisory Opinion (AO) issued by the Commission provides guidance with regard to the specific situation described in the AOR's. Any qualified person who has requested an AO and acts in accordance with the opinion will not be subject to any sanctions under the Act. Other persons may rely on the opinion if they are involved in a specific activity which is indistinguishable in all material aspects from the activity discussed in the AO. Those seeking guidance for their own activity, however, should consult the full text of an AO and not rely only on the summary given here.

AO 1980-51: Volunteer Services Provided by Bank Employees During Work Hours

Volunteer services provided by an employee of the First Farmer and Merchants National Bank (the bank) to a political organization during work hours would not result in an in-kind contribution by the bank, as long as the volunteer activities involved only an ". . . occasional, isolated or incidental use" of the bank's facilities. 11 CFR 114.9(a)(1)(iii).

An employee of the bank could use up to one hour per week of regularly scheduled work time to provide services to a political committee and to act as its official treasurer (including lending his or her name to authorization notices for political advertising) because the volunteer activities would not prevent the employee from completing his or her normal amount of work. 11 CFR 114.9(a)(1)(i). However, the bank would have to be reimbursed for any additional overhead or operating costs the bank incurred as a result of the volunteer activities. 11 CFR 114.9(a). If paid by the employee, this reimbursement would be considered an in-kind contribution to the political organization. 2 U.S.C. §434.

The Commission expressed no opinion on the application of rules of the Comptroller of the Currency to the volunteer services since those rules are not within its jurisdiction. (Date Issued: September 3, 1980; Length: 3 pages)

continued

AO 1980-68 Supplement: Post-Dated Contributions to Primary Runoff Election

Post-dated checks received by the Zell Miller for U.S. Senate Committee (the Committee) for a primary runoff election are considered contributions to the Committee as of the date the Committee receives them. They are subject to a separate contribution limit for the runoff election. A post-dated check must be reported as a memo entry for the reporting period during which it is received, but the amount should not be included in cash totals until after the check has been deposited. (Banks will not permit the deposit of post-dated checks until the date written on the check.) 2 U.S.C. §434(b); 11 CFR 102.9(a)(1) and (2). (Date Issued: August 28, 1980; Length: 2 pages)

AO 1980-81: Application of 1980 Annual Limit to Individual's 1979 Contributions to Draft Committees

Contributions amounting to $12,000 made in 1979 to three "Draft Kennedy" committees by Mr. Mark B. Dayton count against his $25,000 annual contribution limit for 1979 – not 1980. Mr. Dayton's contributions do not count against his 1980 contribution limit because they were not donated to a "single candidate" committee (i.e., a committee supporting Edward Kennedy only) or to committees authorized by Edward Kennedy; nor were they designated for a particular election. 11 CFR 110.5(b)(2). At the time Mr. Dayton made the contributions, Mr. Kennedy had not yet announced his candidacy for the Presidency or authorized any of the three draft committees .

The Commission noted that this opinion did not constitute a determination of when Mr. Kennedy became a Presidential candidate or whether the draft committees were affiliated or unaffiliated. (Date Issued: September 11, 1980; Length: 3 pages)

AO 1980-83: Reporting by Inactive Presidential Committee

The Crane for President Committee, Inc. (the Committee), the principal campaign committee of former Presidential candidate Philip Crane, must continue to file reports on a monthly basis during 1980. The Act and Commission Regulations require monthly reporting during an election year for principal campaign committees of Presidential candidates that have received contributions or made expenditures aggregating $100,000. Mr. Crane's committee has exceeded this threshold and, therefore, may not change to a quarterly reporting schedule even though Mr. Crane is no longer a candidate. 2 U.S.C. §434(a)(3)(A); 11 CFR 104.5(b). (Date Issued: September 10, 1980; Length: 2 pages)

AO 1980-84: Continued Use of Authorized Committee's Former Title

Congressman Richard C. White's authorized campaign committee (the Committee) must use its official title, the Richard C. White Congressional Club of the Permian Basin, on the Committee's statement of organization, on all reports filed by the Committee and on all authorization/nonauthorization notices required by 2 U.S.C. §441d. (The Committee had recently amended its former title, Congressional Club of the Permian Basin, to include the candidate's name, as required by 2 U.S.C. §432(e)(4) and 11 CFR 102.14(a).)

The Committee may, however, use stationery imprinted with its former title for mailings that solicit contributions or advocate his election, provided the Committee includes a statement giving its full official title and indicating it has authorized and paid for the mailing. 2 U.S.C. §441d (a)(1). When the old stationery is used for communications that do not require the authorization notice, the Committee's official title does not have to be included. Nor does the former title of the Committee's checking account have to be amended since the account is not subject to the authorization/nonauthorization notice required by 2 U.S.C. §441d. (Date Issued: August 28, 1980; Length: 2 pages)

AO 1980-86: Abbreviated Title for Separate Segregated Fund

The American Natural Resources, Inc. Political Action Committees (the Committees), the separate segregated funds of American Natural Resources, Inc., may not continue using the abbreviated title "ANR" on Committee checks and letterhead. "ANR" is not an acceptable acronym because it is not a clearly recognized abbreviation by which the corporation is commonly known and it does not adequately inform the public that American Natural Resources, Inc. sponsors the Committees. 2 U.S.C. §432(e)(5); 11 CFR 102.14(c). (Date Issued: August 28, 1980; Length: 2 pages)

AO 1980-88: Personal Services Donated to Presidential Campaign Committee

Bookkeeping services donated by an individual to the Citizens for Election of Harry Davis as President Committee would not be considered a contribution under the Act; nor would the services be reportable. 2 U.S.C. §§431(8)(B)(i) and 431(8)(A)(i). The individual would not, therefore, have violated the Act's contribution limits when the value of the uncompensated services exceeded $1,000. (Date Issued: September 16, 1980; Length: 2 pages)

AO 1980-89: Donation of Food and Beverage to Congressman's District Office Receptions

Food and beverage donated by corporations, partnerships, sole proprietorships and individuals to receptions hosted by Congressman Tony Coelho at his district offices would not constitute "contributions" or "expenditures" under the Act.

The receptions will be held for members of an Arts Committee (and other interested parties) who advise Congressman Coelho on federal legislation related to the arts. Since the purpose of the receptions is to help Congressman Coelho carry out his duties as a federal officeholder, and not to support his reelection campaign, donations to the receptions would not be subject to the Act's limits and prohibitions on contributions or reporting requirements. 2 U.S.C. §§431(8) and (9), 441b.

Such donations could, however, result in prohibited contributions from corporations or in-kind contributions from individuals, sole proprietorships and partnerships if:

1. Any communication made in connection with the receptions expressly advocated the election or defeat of Congressman Coelho or any other candidate for federal office; or
2. Contributions were solicited, made or accepted for Congressman Coelho's campaign.

This opinion supercedes those portions of AO 1975-14 and OC 1975-125 that held that donations received and spent by federal officeholders to defray expenses related to their office are reportable contributions and expenditures.

The Commission expressed no opinion on the application of Rules of the U.S. House of Representatives or of the Internal Revenue Code to the donations. (Date Issued: September 5, 1980; Length: 3 pages)

AO 1980-90: Public Affairs Program Produced and Distributed by Corporation

The Public Affairs Division of the Atlantic Richfield Company (the Company) may **not** produce a videotape of interviews with the major Presidential candidates on energy-related topics for use on commercial and cable television because the communication would result in a prohibited in-kind contribution to each of the candidates. Commission Regulations permit corporations to distribute nonpartisan communications to the general public only if the communications:

1. Do not favor one candidate or political party over another; and
2. Are obtained from a civic or other nonprofit organization which does not endorse or support, or is not affiliated with, any candidate or political party. 11 CFR 114.4(c)(3).

Although nonpartisan in nature, the proposed videotape would still result in a prohibited in-kind contribution to each of the participating candidates since it was prepared by the Company – not a civic or other nonprofit organization. Nor would the program be considered a news story exempt from the Act's definition of expenditure since that exemption applies only to election-related news stories, commentaries and editorials sponsored by broadcasters, newspapers or other public media. 2 U.S.C. §431(1)(B)(i). Chairman Max L. Friedersdorf and Commissioner Joan D. Aikens will file dissenting opinions. (Date Issued: September 9, 1980; Length: 3 pages)

AO 1980-93: Coin as Campaign Item

Richard Bozzuto, a Senate candidate from Connecticut, may distribute a United States penny as a campaign item. All costs related to the distribution must be reported pursuant to 2 U.S.C. §434. The Commission expressed no opinion on the possible application of other federal statutes to the item. (Date Issued: September 10, 1980; Length: 2 pages)

AO 1980-96: Post-Election Public Funding for New Party Presidential Candidate

John B. Anderson will not be excluded from receiving post-election public funding as the Presidential candidate of a new party, provided:

1. Mr. Anderson receives five percent or more of the total popular votes cast in the 1980 Presidential general election (including votes cast for him as an independent candidate); and
2. Mr. Anderson satisfies all other eligibility requirements for public funding stipulated in the Presidential Election Campaign Fund Act.

Mr. Anderson will not be excluded from receiving post-election public funding because his campaign efforts for the Presidency have qualified him as a "candidate," and the various organizations supporting him have qualified as newly established "political parties" for purposes of the Presidential Election Campaign Fund Act and relevant Commission Regulations.

Mr. Anderson qualifies as a "candidate" under the Presidential Election Campaign Fund Act because he is presently certified to be on the ballot (or has met all requirements for ballot access) in 10 or more states as either an independent candidate or the candidate of a political party.* 26 U.S.C. §9002(2)(B).

A number of the organizations supporting Mr. Anderson's candidacy qualify as "political parties" because they meet the three criteria established in Commission Regulations for a "political party." Specifically, each of these political organizations constitutes: "1) an association, committee, or organization 2) which nominates or selects an individual for election to any federal office, including the office of President or Vice President of the U.S. 3) whose name appears on the general election ballot as the candidate of such association, committee or organization" (numbers added for emphasis). 11 CFR 9002.15.

The National Unity Campaign, headquartered in Washington, D.C., and various state organizations supporting Mr. Anderson satisfy the second criteria of a political party, i.e., that of "nominating" or "selecting" a candidate, because they have met the requirements in their respective states for obtaining ballot access for a candidate. In some states, the Anderson organizations have conducted successful petition drives while in other states the organizations have obtained ballot access by holding caucuses to select delegates to state conventions which, in turn, have selected Mr. Anderson as their Presidential candidate.

The organizations which have nominated Mr. Anderson will fulfill the third criteria of "political party" when the FEC receives verification from appropriate state election officials that Mr. Anderson will appear on the ballot in their respective states as the candidate of one of these organizations.

The Commission did not decide whether the National Unity Campaign or any of the other organizations which have nominated Mr. Anderson constitute a "national committee of a political party" as defined by 2 U.S.C. §431(14). Vice Chairman John Warren McGarry filed a dissenting opinion. Commissioners Frank P. Reiche and Robert O. Tiernan filed concurring opinions. (Date Issued: September 4, 1980; Length: 21 pages, including dissenting and concurring opinions)

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*In AO 1980-50, the Commission concluded that a new party candidate would be eligible to receive post-election public funding based on **all** the popular votes received by the candidate in the 1980 Presidential general election, including those votes cast for the candidate as an independent candidate.

THE LAW IN THE COURTS

COURT DENIES FEC'S MOTION FOR SUMMARY JUDGMENT IN INDEPENDENT EXPENDITURES SUIT

On August 28, 1980, the U.S. District Court for the District of Columbia issued an expedited order in the suit *FEC* v. *Americans for Change, et al.* (Civil Action No. 80-1754) with an opinion to follow at a later date. In its order, the Court denied the FEC's motion for summary judgment while granting defendants' motion for summary judgment.

The FEC had sought a ruling from the Court that:

1. Expenditures defendants proposed to make on behalf of a publicly funded Presidential nominee of a major party were in violation of 26 U.S.C. §9012(f)(1); and
2. 26 U.S.C. §9012(f), which limits expenditures made by unauthorized political committees on behalf of a Presidential nominee receiving public funds, is constitutional as applied to defendants' expenditures.

Defendants, on the other hand, had sought a ruling that:

1. This provision of the Presidential Election Campaign Fund Act did not apply in cases where a committee's activities were independent of the candidate's campaign; and
2. Alternatively, if the statute were applied as suggested by the Commission, it would be unconstitutional.

COURT DISMISSES JOHN B. ANDERSON ET AL. v. FEC

On September 9, 1980, the U.S. District Court for the District of Columbia dismissed the suit, *John B. Anderson et al.* v. *FEC* (Civil Action No. 80-1911). The Court determined that there was no longer a need for a decision either on the FEC's motion to dismiss the suit or on the substantive issues raised in the suit.

In the suit, plaintiffs had sought an expedited ruling by the Court that John B. Anderson would be eligible as an independent candidate for the same post-election public funding as that provided Presidential candidates of "new parties," if he received five percent or more of all popular votes cast in the 1980 Presidential general election and met other requirements of the Act. Such a ruling, plaintiffs told the Court, would immediately make large bank loans available to the Anderson campaign.

The FEC had consistently argued that plaintiffs should have requested an advisory opinion from the FEC on the application of the Act and the Commission's new regulations to the Anderson campaign **before** seeking a Court ruling. On August 13, plaintiffs did file an advisory opinion request (AOR 1980-96) with the FEC, and on September 4 the Commission issued an opinion declaring Mr. Anderson eligible for post-election public funding as the candidate of a new political party. (See summary of AO 1980-96, page 5.)

After issuing the Anderson opinion, the FEC filed a supplement to its motion to dismiss the suit, submitting the opinion and arguing that it fully supported its consistent position that the case should be dismissed. Plaintiffs, who had opposed the FEC's motion to dismiss, also filed their own motion to dismiss the case as moot.

NEW LITIGATION

John B. Anderson et al. v. FEC (Second Suit)

Plaintiffs seek declaratory and injunctive relief to declare unconstitutional those provisions of the Act which entitle a national party committee to receive contributions of up to $20,000 per year from individuals (2 U.S.C. §441a(a)(1)(B)) and to make special limited expenditures on behalf of its Presidential nominee (2 U.S.C. §441a(d)(1)). Plaintiffs ask the District Court of Maine to certify the questions of constitutionality to the U.S. Court of Appeals for the First Circuit and to grant a preliminary injunction directing the FEC to permit the "National Unity Campaign 441a(d) Committee," a committee which registered the day before suit was filed, to:

1. Receive contributions of up to $20,000 from individuals during 1980, as provided by 2 U.S.C. §441a(a)(1)(B); and
2. Make special "coordinated" expenditures on Mr. Anderson's behalf, as provided by 2 U.S.C. §441a(d)(1).

On September 22, the Commission filed a motion to dismiss the case and opposed plaintiffs' motion for a preliminary injunction.

(U.S. District Court for the District of Maine, Docket No. 80-0272P and Supplement, September 8, 1980, and September 11, 1980.)

REGULATIONS

REVISED GENERAL ELECTION REGULATIONS PRESCRIBED

On September 5, 1980, the Commission prescribed revised regulations governing the public financing of Presidential general election campaigns. The revised regulations contain refinements based on the Commission's experience in administering the public funding program for the 1976 general election. They also reflect the 1979 Amendments to the Act.

These regulations, which were renumbered to conform with the section of the U.S. Code on which they are based (26 U.S.C. §9001, *et seq.*), were published in their entirety in the *Federal Register* on June 27, 1980 (45 FR 43371). Highlights of major modifications in the regulations appeared in the August 1980 *Record.*

STATUS OF FEC REGULATIONS

Regulations*	Date Sent to Congress	Federal Register Publication	Date Prescribed** by the Commission
11 CFR 9033.9 Suspension of Primary Matching Fund Payments	4/10/80	4/15/80 (45 FR 25378)	7/3/80
11 CFR Part 4 Public Records and the Freedom of Information Act	Not applicable	5/13/80 (45 FR 31291)	6/12/80
11 CFR Part 5 Access to Public Disclosure Division Documents	Not applicable	5/13/80 (45 FR 31292)	6/12/80
11 CFR, Parts 100 and 110 Contributions to and Expenditures by Delegates to National Nominating Conventions	5/14/80	5/23/80 (45 FR 34865)	8/7/80
11 CFR, Parts 100, 106, 110, 140-146 and 9001-9007 Public Financing of Presidential General Election Campaigns	6/13/80	6/27/80 (45 FR 43371)	9/5/80

*The chart is cumulative, listing all amendments to the FEC Regulations proposed after the April 1980 edition of 11 CFR was published, including any technical amendments.

**The Commission may prescribe its regulations 30 legislative days after it has transmitted them to Congress, provided neither the House nor the Senate disapproves them during this period.

PUBLIC FINANCING

FEC CERTIFIES DEMOCRATIC GENERAL ELECTION FUNDS

On August 21, 1980, the Commission approved payment of $29,440,000 in federal funds for the general election campaign of Democratic Presidential nominee Jimmy Carter and his Vice Presidential running mate, Walter Mondale. President Carter and Vice President Mondale had requested the funding in an August 15 letter to the Commission. In that letter, the candidates agreed to abide by the overall spending limit, to use only public funds for the campaign and to comply with other legal requirements. They designated the Carter/Mondale Reelection Committee, Inc., based in Washington, D.C., as the recipient of the funds.

By law, the Presidential nominee of each major party is entitled to full public financing of the general election campaign ($20 million plus a cost-of-living adjustment). Major party candidates accepting public financing for their general election campaigns are subject to a spending limit of $29,440,000 (the amount of the grant). In addition, the use of the nominees' personal funds is limited to $50,000. (All expenditures made by or on behalf of a Vice Presidential candidate are considered to be made on behalf of the Presidential candidate.) Private contributions from individuals and groups may not be accepted. Presidential candidates may, however, solicit private funds, subject to monetary limits, to cover legal and accounting expenses incurred to ensure compliance with the Act. These legal and accounting costs are exempt from the overall spending limit for each of the Presidential candidates.

As of August 21, 1980, the Commission had also certified $29,440,000 to the Republican Presidential and Vice Presidential nominees, $8,832,000 in Presidential nominating convention payments to the Democratic and Republican National Committees ($4,416,000 each) and $29,624,936.78 in Presidential primary matching funds to ten Presidential primary candidates.

800 LINE

May an individual file a complaint with the FEC if he or she believes a candidate or committee has violated a provision of the election law or FEC Regulations?

Yes. A complaint should be filed with the FEC's Office of General Counsel. It must contain the name, address and telephone number of the person making the complaint; a clear statement of facts; and any evidence concerning the violation. The complaint must be sworn to by the person making the complaint, and it must be signed and notarized. (For information on how the FEC processes a complaint, see the April 1980 *Record*, page 6.)

How can an individual obtain information on election-related topics over which the FEC has no jurisdiction, such as tax deductible contributions?

Topics that are related to federal elections, but which do not come under the FEC's jurisdiction, are listed below with the appropriate agency to contact for more information:

Ballot Access. State election office in state where candidacy is desired.

Communications Issues (equal time provisions, equal access to media and editorial replies). Federal Communications Commission, Complaints/Political Broadcast Branch, 1919 M Street, N.W., Washington, D.C. 20554; Telephone: 202/632-7586.

Political Activity and the Hatch Act (federal employees). Office of Personnel Management, Office of General Counsel, 1900 E Street, N.W., Washington, D.C. 20415; Telephone: 202/254-3230.

Tax Issues (tax deductible contributions and federal taxation of political committees). Internal Revenue Service (IRS), Information Office, 1201 E Street, N.W., Washington, D.C. 20226; Telephone: 202/488-3100. In addition, each state IRS office has an 800 line. Call the local operator for the number.

Tabulation of the Popular Vote. State election office in each state.

Voter Fraud or Violation of Voting Rights. State election office in each state. For alleged violations of federal law: Justice Department, Public Integrity Unit, 10th Street and Constitution Avenue, N.W., Washington, D.C. 20530; Telephone: 202/724-7062.

FEDERAL REGISTER NOTICES

The list below identifies all FEC documents which appeared in the *Federal Register* between August 7, 1980, and September 5, 1980. Copies of these notices are **not** available from the FEC.

Notice	Title	Federal Register Publication Date	Citation
1980-26	11 CFR, Parts 100 and 110: Contributions to and Expenditures by Delegates to National Nominating Conventions (Notice of final rule-making)	8/7/80	45 FR 52356
1980-27	11 CFR, Chapter 1: Nonpartisan Communications by Corporations or Labor Organizations (Notice of proposed rulemaking)	8/25/80	45 FR 56349
1980-28	11 CFR, Parts 100, 106, 110, 140-146 and 9001-9007: Public Financing of Presidential General Election Campaigns; Effective Date Confirmation	9/5/80	45 FR 58820

COMPLIANCE

FEC PUBLISHES NAMES OF NONFILERS

From July 23 through August 22, 1980, the Federal Election Commission published five separate listings of nonfilers who failed to file campaign finance reports required by the Federal Election Campaign Act (the Act). On July 23, August 1 and August 4, 1980, the Commission published the names of six campaign committees authorized by Senate and House candidates which had failed to file their pre-election reports for primaries held in Connecticut, Georgia, Michigan, Missouri and Tennessee. On July 31, 1980, the Commission published a list of campaign committees authorized by five Senate and 28 House candidates which had failed to file their second quarterly reports. This list included committees based in 14 states. On August

The RECORD *is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: Max L. Friedersdorf, Chairman; John Warren McGarry, Vice Chairman; Joan D. Aikens; Thomas E. Harris; Frank P. Reiche; Robert O. Tiernan; J.S. Kimmitt, Secretary of the Senate, Ex Officio; Edmund L. Henshaw, Jr., Clerk of the House of Representatives, Ex Officio. For more information, call 202/523-4068 or toll-free 800/424-9530.*

22, the Commission published the names of two campaign committees authorized by House candidates which had failed to file their pre-election reports for a Georgia primary runoff.

The Act specifies that the Commission publish only the names of committees authorized by candidates (i.e., individuals who have received or expended in excess of $5,000 to influence federal elections). Nevertheless, the Act gives the Commission broad authority to initiate enforcement actions against any type of political committee for failure to file required reports. Enforcement action against nonfilers and late filers is based on the level of financial activity, the percentage of total votes received by the candidate, and the degree of lateness of the report.

SUMMARY OF MUR's

Selected compliance cases, which have been closed and put on the public record, are summarized in the *Record*. Compliance matters stem from possible violations of the Federal Election Campaign Act of 1971, as amended, which come to the Commission's attention either through formal complaints originating outside the Commission or by the FEC's own monitoring procedures. The Act gives the FEC the exclusive jurisdiction for the civil enforcement of the Act. Potential violations are assigned case numbers by the Office of General Counsel and become "Matters Under Review" (MUR's). All MUR investigations are kept confidential by the Commission, as required by the Act.

MUR's may be closed at any one of several points during the enforcement process, including when the Commission:

- Determines that no violation of the Act has occurred;
- Determines that there is no reason to believe or no probable cause to believe a violation of the Act has occurred;
- Enters into a conciliation agreement with the respondent;
- Finds probable cause to believe a violation has occurred and decides to sue; or
- Decides at any point during the enforcement process to take no further action.

After the MUR is closed and released by the Office of General Counsel, the Commission makes the MUR file available to the public. This file contains the complaint, the findings of the General Counsel's Office and the Commission's actions with regard to the case, including the full text of any conciliation agreement. The Commission's actions are not necessarily based on, or in agreement with, the General Counsel's analysis.

Selection of MUR's for summary is made only from MUR's closed after January 1, 1979. The *Record* article does not summarize every stage in the compliance process. Rather, the summary provides only enough background to make clear the Commission's final determination. The full text of these MUR's and others which were closed between 1976 and the present are available for review and purchase in the Commission's Public Records Office.

MUR 960: National Political Committee's Failure to Include Notices on General Public Communications

On April 28, 1980, the Commission entered into a conciliation agreement with a national political committee which had violated 2 U.S.C. §441d by failing to display statements of candidate authorization/nonauthorization in communications which were directed to the general public and which expressly advocated the election of clearly identified federal candidates.

Complaint: On April 30, 1979, a national "pro-choice" political committee filed a complaint against a national "pro-life" political committee (registered under the Act) and a state "pro-life" group (not registered under the Act). The pro-choice committee alleged that the pro-life political committee had made significant expenditures during 1978 to influence federal elections, but had failed to report these expenditures to the FEC. Specifically, the pro-choice committee claimed that:

1. The national pro-life committee and the state pro-life group may have violated 2 U.S.C. §434 by failing to report expenditures for the preparation and distribution of brochures and flyers endorsing federal candidates. The complaint noted that the national pro-life committee sponsored newspaper advertisements directed to

continued

FEC PUBLIC APPEARANCES

In keeping with its objective of making information available to the public, the Commission accepts invitations to address public gatherings. This column lists upcoming scheduled Commission appearances, the name of the sponsoring organization, the location of the event and the name of the Commission's speaker. For additional information on any scheduled appearance, please contact the **sponsoring organization.**

10/14 Human Factors Society
Los Angeles, California
Dr. Gary Greenhalgh, Director, Clearinghouse

10/22 American Society of Women Accountants
Washington, D.C.
Commissioner Joan D. Aikens

10/26 Bradley Hills Presbyterian Church
Adult Education Seminar
Bethesda, Maryland
Commissioner Frank P. Reiche

10/29 American University Students
Federal Election Commission
Commissioner Robert O. Tiernan

the general public costing approximately $955, widely distributed a brochure costing $699, and distributed a one-page flyer.

2. The national pro-life committee may have violated 2 U.S.C. §434 by failing to report the liquidation of a debt. The complaint noted that, while the national pro-life committee had reported expenditures for printing the brochure as an outstanding debt to a printing company on its 1978 post-general election report, it did not report the debt (or its liquidation) on any subsequent report.
3. The state pro-life group constituted a "political committee" by virtue of making expenditures in excess of $1,000 to advocate the election of federal candidates, and should have registered with the Commission and reported pursuant to 2 U.S.C. §§433 and 434.
4. The national pro-life committee and the state pro-life group may have violated 2 U.S.C. §441d by making expenditures for communications expressly advocating the election of clearly identified federal candidates without including the required statements of authorization/nonauthorization by those candidates; and
5. The national pro-life committee may have violated 2 U.S.C. §433 by failing to include the state pro-life group and/or other pro-life groups as affiliated organizations in the statement of organization it had filed with the FEC.

General Counsel Reports: After investigating these allegations, the Office of General Counsel reached the following conclusions:

While the national pro-life committee had failed to report the debt for printed materials on its 1978 year-end report, the committee had responded promptly to the Commission's request for further information (RFAI) concerning this debt. Therefore, since the committee had corrected this reporting error prior to the filing of the complaint, the Office of General Counsel recommended that the Commission take no further action on the committee's failure to report debt liquidation.

Although the national pro-life committee did not refute the fact that certain publications were examples of express advocacy, it maintained that they were exempted from the requirements of 2 U.S.C. §441d since this provision omitted any direct reference to a requirement to print a notice on "hand bills." The General Counsel's report pointed out, however, that §441d exempted only those "small items" which could not bear the notice. In addition, since the national committee distributed more than 15,000 copies of the handbills, the General Counsel concluded they were general public advertisements – not "personal correspondence," as the national pro-life committee had maintained. The Office of General Counsel therefore recommended that the Commission find reasonable cause to believe that the national pro-life committee had violated 2 U.S.C. §441d.

During its investigation into the state pro-life group's possible failure to include authorization/nonauthorization notices by candidates on express advocacy communications, the Office of General Counsel found that the state group had neither paid for nor authorized the printing of its name on the communications cited in the complaint. Investigation revealed that the state group's name was used by two individuals representing local pro-life groups, **without** the authorization or knowledge of the state pro-life group. Therefore, the Office of General Counsel recommended the Commission find no reasonable cause to believe that the state pro-life group had violated 2 U.S.C. §441d. The General Counsel believed that the two individuals representing local pro-life groups may have violated 2 U.S.C. §441d, but, because the publications sponsored by the two individuals were minimal in cost and limited in circulation, the General Counsel recommended that the Commission take no further action. The Office of General Counsel did, however, send certified letters to the two individuals explaining that they should have indicated that they had "paid for" the publication of the communications and stated whether or not the publications were authorized by a candidate.

The Office of General Counsel recommended that no further action be taken with regard to the national committee's failure to report the state pro-life group or other local pro-life groups as affiliated organizations in violation of 2 U.S.C. §433.

Commission Determination: On November 1, 1979, the Commission found reasonable cause to believe that the national pro-life committee had violated 2 U.S.C. §441d by making expenditures for communications expressly advocating the election of clearly identified federal candidates without properly displaying statements of authorization/nonauthorization by those candidates endorsed. On April 28, 1980, the Commission entered into a conciliation agreement with the national committee in which the committee agreed to pay a civil penalty for the violation.

CHANGE OF ADDRESS

Political Committees

Registered political committees are automatically sent the *Record.* Any change of address by a registered committee must, by law, be made in writing as an amendment to FEC Form 1 (Statement of Organization) and filed with the Clerk of the House, the Secretary of the Senate or the FEC, as appropriate.

Other Subscribers

Record subscribers (who are not political committees), when calling or mailing in a change of address, are asked to provide the following information:

1. Name of person to whom the *Record* is sent.
2. Old address.
3. New address.
4. Subscription number. The subscription number is located in the upper left hand corner of the mailing label. It consists of three letters and five numbers. Without this number, there is no guarantee that your subscription can be located on the computer.

AUDITS

AUDITS RELEASED TO THE PUBLIC

The Federal Election Campaign Act, as amended (the Act) requires candidates and political committees to file financial disclosure reports with the Commission. The Act also gives the Commission authority to audit campaigns of all Presidential candidates who receive public funds, and the reports of other political committees. Final audit reports are available to the press through the Press Office and to the general public through the Office of Public Records. The following is a chronological listing of audits released between May 15, 1980, and September 11, 1980.

Audit	Date Made Public
1. Black Voters For Republican Congress	5/15/80
2. Herman Badillo, NY/21, Committee For the Re-Election of Congressman Herman Badillo and the Friends of Herman Badillo	5/15/80
3. State Republican Executive Committee of Texas	5/28/80
4. Nebraska Republican State Central Committee and the Nebraska Republican Federal Campaign Committee	5/28/80
5. Ohio Democratic State Voter Registration Drive	5/28/80
6. National Democratic Party Affairs Committee of the Arkansas Democratic State Committee	5/28/80
7. American Conservative Union	5/28/80
8. Republican National Committee – Contributions	6/12/80
9. Texas Medical Political Action Committee	6/25/80
10. Honorable Richard H. Austin, Austin For Senate	6/25/80
11. The Carter/Mondale Presidential Committee, Inc. (Threshold Audit Report of Primary Campaign)	7/10/80
12. Roger Lea MacBride, The MacBride For President Committee and all Authorized Committees of Roger Lea MacBride	7/16/80
13. Gus Hall, Hall Tyner Election Campaign Committee, Hall Tyner Election Campaign Committee of California and New York Hall-Tyner Aptheker Campaign Committee	7/24/80
14. Gus Hall/Hall-Tyner-Flory Campaign '76	8/1/80
15. Republican State Central Committee of Maryland	8/12/80
16. Regular Hudson County Dinner Committee	9/11/80
17. Idaho Republican Congressional Campaign Committee/Idaho Republican State Central Committee	9/11/80

CLEARINGHOUSE

SUBSCRIPTIONS TO THE ELECTION LAW UPDATES AND THE ELECTION CASE LAW SERIES

The following publications from the FEC's Clearinghouse are now available on a subscription basis from the Government Printing Office:

- *Election Law Updates* is a quarterly series which summarizes all new state and federal election legislation. The series is cumulative through the year, culminating in an annual summary. It is indexed by topic and state. Subscription price: $11.00 per year.
- *Election Case Law* is a quarterly series which summarizes recent state and federal litigation relating to election matters. The series is cumulative through the year, culminating in an annual summary. It is indexed by topic and case. Subscription price: $10.00 per year.

You may order these subscriptions by mail from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Identify report title. Enclose a check or money order for subscription price(s) payable to Superintendent of Documents. Please do **not** send checks or money orders to the Federal Election Commission.

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RECORD

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INFORMATION

CONTRIBUTIONS FROM UNREGISTERED ORGANIZATIONS

The Federal Election Campaign Act and Commission Regulations permit political committees* to accept contributions from unregistered organizations (i.e., committees that are not required to report under the Federal Election Campaign Act). Political committees which receive contributions from unregistered organizations are, however, responsible for determining whether or not those contributions consist of any funds which are prohibited under the Act (e.g., contributions from national banks, corporations, unions or foreign nationals). If a political committee does receive a contribution from an unregistered organization which consists of funds from prohibited sources, the full amount of the contribution must be refunded. If the recipient committee has an account which is used for nonfederal activity, however, it may transfer corporate or union contributions into that account. Directive No. 19 Revised, September 12, 1980.

*For a definition of "political committee," see Commission Regulations at 11 CFR 100.5.

CORRECTION

The October *Record* incorrectly listed the purchase price of the Commission's updated edition of the cumulative *Index to Advisory Opinions*. The correct price is $2.55 per copy. Requests for the *Index* should be addressed to the Public Records Office, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Orders should be sent to the Commission and accompanied by a check or money order made payable to the U.S. Treasurer.

REPORTS

COMPUTERIZED FORMAT FOR REPORTING ITEMIZED RECEIPTS AND DISBURSEMENTS

On September 2, 1980, the Commission established new procedures designed to expedite Commission approval of requests to use a computerized format for reporting itemized receipts and disbursements. The Commission delegated authority for approving such requests to the Reports Analysis Division rather than requiring a formal Commission vote on each request.

The Reports Analysis Division and, if appropriate, the Clerk of the House or the Secretary of the Senate will review sample formats submitted by political committees. To be approved, sample formats must meet the following requirements:

1. They must contain complete information and must conform to the format of Schedules A (itemized receipts) and B (itemized disbursements) of FEC Form 3 or 3X. If any information required by Schedules A or B is not contained in a sample schedule, the schedule will **not** be approved. The Reports Analysis Division will indicate in a letter to the committee which information must be supplied.

   NOTE: The Reports Analysis Division will, however, conditionally approve sample formats that contain information required by Schedules A and B but which do not conform to the standard format of the schedules (or from which only minor items are missing). The committee will then be required to modify its sample format to conform to the standard format of Schedules A and B.

2. They must lend themselves to being legibly xeroxed or microfilmed.

The Commission is currently developing a standardized format for computerized schedules. In the future, political committees using this computerized format will be assured of approval by the Commission. Directive No. 37, October 6, 1980.

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OPINIONS

ADVISORY OPINION REQUESTS

Advisory Opinion Requests (AOR's) pose questions on the application of the Act or Commission Regulations to specific factual situations described in the AOR. The following chart lists recent AOR's, with a brief description of the subject matter, the date the requests were made public and the number of pages of each request. The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR	Subject	Date Made Public	No. of Pages
1980-108	Bank loans to new party Presidential candidate.	9/18/80	26
1980-109	Publication of endorsement, solicitation or campaign materials in subscription periodical.	9/19/80	8
1980-110	Registration and reporting requirements for local party committee.	9/19/80	2
1980-111	Establishment of separate segregated fund by trade association with foreign corporate members.	9/22/80	2
1980-112	Post-election public funding used for loan repayments.	9/22/80	4
1980-113	Use of surplus funds for political purposes and official duties.	9/22/80	2
1980-114	Disposition of checks refunded to terminated committee.	9/23/80	3
1980-115	Law firm's compensation to partner campaigning as Congressional candidate.	9/23/80	3
1980-116	Independent political committee aided by paid Presidential campaign workers.	9/25/80	2
1980-117	Return of prohibited funds by state political organization registering as (federal) political committee.	9/26/80	2
1980-118	Definition of stockholder for purposes of solicitations by corporate separate segregated fund.	9/26/80	4
1980-119	Coordinated party expenditures for television ads that are partially broadcast to area outside Senate candidate's state.	10/6/80	5
1980-120	Host committee's payment of convention expenses with funds transferred from general account to convention account.	10/7/80	2
1980-121	Political party's status as national party committee.	10/14/80	7

ADVISORY OPINIONS: SUMMARIES

An Advisory Opinion (AO) issued by the Commission provides guidance with regard to the specific situation described in the AOR. Any qualified person who has requested an AO and acts in accordance with the opinion will not be subject to any sanctions under the Act. Other persons may rely on the opinion if they are involved in a specific activity which is indistinguishable in all material aspects from the activity discussed in the AO. Those seeking guidance for their own activity, however, should consult the full text of an AO and not rely only on the summary given here.

AO 1980-87: Local Party Committee's Expenditures for President Ticket

The Pelham Republican Town Committee, a subordinate committee of the state party committee, may make expenditures for local newspaper and direct mail advertising which support the Republican Presidential ticket only if the Republican National Committee authorizes the subordinate committee as its designated agent. Moreover, these expenditures must be charged against the Republican National Committee's overall "coordinated party" expenditure limit for the Presidential ticket and must be reported by the national committee. 2 U.S.C. §§441a(d)(1) and (2); 11 CFR 110.7(a)(4), 109.1(d)(2) and 104.3(b)(1)(viii).

Commission Regulations prescribed after the enactment of the 1979 Amendments eliminated the special $1,000 expenditure which a subordinate party committee could make on behalf of its party's Presidential nominees in the general election. Under current Regulations, subordinate party committees may, however, make other types of exempted expenditures that indirectly benefit the Presidential nominee. For example, a state or local party committee may pay for:

- **Certain campaign materials** (e.g., handbills, pins, bumper stickers, brochures) which are distributed by volunteers, provided the materials are not designed for general

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public political advertising and meet other conditions spelled out in Commission Regulations. See 11 CFR 100.7(b)(15) and 100.8(b)(16); and

– **Voter registration and get-out-the-vote activities,** provided specified conditions are met. See 11 CFR 100.7(b)(17) and 100.8(b)(18).

A local party committee is required to register as a "political committee" under the Act, however, when it spends more than $5,000 a year for such exempted activities.

For more detailed information on the application of the Act and FEC Regulations to state and local party committee activities, see the "800 Line," page 6 of this issue, and the August 1980 FEC *Record Supplement,* available at no cost from: Office of Public Communications, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463; or call 202/523-4068 or toll-free 800/424-9530. (Date Issued: September 15, 1980; Length: 4 pages)

AO 1980-92: Corporate Contributions to Nonpartisan Organization's Voter Registration Drives

The Voter Registration Program (VRP), a nonprofit, nonpartisan corporation whose sole purpose is to sponsor voter registration drives, may accept donations to support its voter registration drives from corporations, foundations and other entities if, in connection with its efforts to register voters in California, it has not, does not and will not endorse, support or oppose candidates for political office or political parties. 11 CFR 114.4(d)(2). (Date Issued: September 11, 1980; Length: 3 pages)

AO 1980-94: Essay Contest Sponsored by Congressman's Campaign Committee

The Whitehurst for Congress Committee may pay all costs of sponsoring an essay contest for high school students in Mr. Whitehurst's Congressional district, as long as these costs are reported pursuant to 2 U.S.C. §434. (Date Issued: September 19, 1980; Length: 2 pages)

AO 1980-95: National Bank's Contribution to State Political Fund

The First National Bank of Florida (the Bank) may make a contribution to "5 for Florida's Future," a fund whose express purpose is to promote adoption of five amendments to Florida's Constitution. Although the state's referendum on the ballot issues will be held in conjunction with a primary run-off election, the bank's contribution does not fall within the purview of the Act because the contribution will be used to influence a ballot referendum – not the election of any candidate for public office. The Commission noted that the Supreme Court examined virtually the same issue in *The First National Bank of Boston et al.* v. *Bellotti.* (Date Issued: September 19, 1980; Length: 3 pages)

AO 1980-97: Trust for Pre-Election Presidential Transition Activities

The Presidential Transition Trust (the Trust), a group established to undertake certain transition activities on behalf of a potential new Republican administration prior to the November 4 election, will not constitute a "political committee" under the Act, provided the Trust:

1. Does not assist the Reagan-Bush Committee in any of its campaign activities; and
2. Does not use its assets to further the election of the Republican Presidential ticket.

Donations to, or disbursements by, the Trust would not be considered "contributions" or "expenditures" under the Act.

As an organization totally separate from the Reagan-Bush Committee, the Trust plans only to conduct transition activities, such as gathering information about critical jobs in a possible new administration and identifying personnel qualified to fill those positions. Donors to the Trust will be asked to sign a card affirming that their donations are given for the purpose of funding pre-election transition activities and not for influencing federal elections. Donations will be limited to $5,000 per individual. In addition, The Trust will not accept donations from corporations, national banks or labor organizations.

The Commission expressed no opinion on the application of the Presidential Transition Act of 1963 to the Trust's activities since that statute is outside its jurisdiction. (Date Issued: September 15, 1980; Length: 4 pages)

AO 1980-98: Title/Solicitation Activities of Separate Segregated Fund

The Birmingham Trust National Bank Committee for Good Government (the Committee) is an acceptable title for the separate segregated fund of the Birmingham Trust National Bank (the Bank) because it includes the sponsoring organization's full name. 2 U.S.C. §432(e)(5); 11 CFR 102.14(c). (To comply with 1979 Amendments to the Act, the Committee had changed its title from the Southern Committee for Good Government to its current title.) The Committee's title does not have to include the names of the Bank's corporate affiliates whose executive and administrative personnel the Committee also solicits.

The Committee's new abbreviated title, BTNB Committee for Good Government, is not permissible, however, because "BTNB" is not a clearly recognizable abbreviation. 11 CFR 102.14(c).

The Commission noted that the Advisory Opinion Request had suggested that the Committee does not restrict solicitations to shareholders and executive and administrative personnel of the Bank and its affiliates. While the Bank or the Committee may solicit the executive and administrative personnel of the Bank's subsidiaries, branches, divisions and affiliates and their families at any time, it may solicit other employees only twice a year according to special procedures described in 11 CFR 114.6(1). (Date Issued: September 26, 1980; Length: 3 pages)

AO 1980-99: Accounting Methods for Contributions Under $50

When the Republican Roundup Committee (the Committee), a registered political committee, hosts fundraising events, it must keep records of all contributions, including those under $50. 2 U.S.C. §432(c)(1). While neither the Act nor the Commission's Regulations specify the details for keeping records of contributions under $50, the Regulations state that "an account [of **all** contributions received] shall be kept by any reasonable accounting procedure." 11 CFR 102.9(a).

continued

The Commission recommended two alternative accounting methods for keeping the records of small contributions:

1. The Committee may keep the same records of contributions under $50 that it must keep for contributions of $50 or more, i.e., the name and address of each contributor and the date and amount of the contribution. If the Committee uses this method, or otherwise retains information on the names of contributors, it should also track the amount donated by each contributor on a calendar year basis so it can comply with the requirements for recording aggregated contributions. 11 CFR 102.9(a)(2).
2. Alternatively, the Committee may record the name of the fundraising event, the dates the contributions were received for the event, and the total amount of contributions received on each day for the event. Using this method, the Committee must nevertheless keep more complete records for contributions aggregating $50 or more (see above). (Date Issued: September 26, 1980; Length: 2 pages)

AO 1980-100: Separate Segregated Fund Established by Corporation Wholly Owned by Foreign Nationals

The Revere Sugar Corporation (Revere), a corporation wholly owned by foreign nationals, may pay costs of establishing, administering and soliciting contributions to a separate segregated fund (the Committee). Revere's sponsorship of the Committee will not result in (prohibited) contributions by foreign nationals. Revere itself is not a "foreign principal" – hence not a "foreign national" – because it is a domestic corporation whose principal place of business is in the United States. (See 22 U.S.C. §611(b).) Moreover, no foreign nationals will exercise decision-making authority over the Committee's activities and no contributions will be solicited or accepted from foreign nationals.

The Commission noted that it has authority to audit the Committee's activities. Commissioner Thomas E. Harris filed a dissenting opinion. (Date Issued: September 19, 1980; Length: 4 pages, including dissenting opinion)

AO 1980-101: Commercial Use of Campaign Finance Information

Except for information identifying individual contributors, Marwin I. Weinburger may use any information copied from FEC documents and reports filed with the Commission in a directory of political action committees, which he plans to publish and sell.

Although the Act and Commission Regulations generally prohibit commercial use of information copied from FEC reports, Section 104.15(c) of the Regulations does allow this information to be used in newspapers, magazines, books and other similar communications. The communications, however, may not use any FEC information on individual contributors. (Date Issued: September 26, 1980; Length: 3 pages)

AO 1980-102: Definition of Immediate Family for Solicitation Purposes

The Fru-Con Corporation Political Action Committee, the separate segregated fund of the Fru-Con Corporation, may solicit contributions from the immediate family of Fru-Con's executive and administrative personnel. For these purposes, "immediate family" includes the children and parents who live in the household with the corporate personnel. The Committee may not, therefore, solicit members of the immediate family living outside the home. 2 U.S.C. §441b(b)(4)(A); 11 CFR 114.5(g)(1). (Date Issued: October 1, 1980; Length: 3 pages)

AO 1980-105: Notices Required for Advocacy Literature

The Pro-Life Action Council (the Council) must include a notice of nonauthorization on any general public political communication which the Council finances if the communication expressly advocates the election or defeat of a clearly identified candidate for federal office. If the communication is issued without a candidate's authorization, the notice must clearly identify the Council as the organization which has ". . . paid for the communication and state that the communication is not authorized by any candidate or candidate's committee." 2 U.S.C. §441d(a)(3); 11 CFR 110.11(a)(1)(iii). (Date Issued: October 6, 1980; Length: 2 pages)

AO 1980-107: Volunteer Services Provided by Senior Partner of Law Firm

A senior partner may provide free services to the Reagan-Bush Committee during normal working hours while continuing to receive full compensation from his law firm. 2 U.S.C. §431(8)(A). The compensation will not count as an in-kind contribution from the firm to the Committee because the partner's compensation is not determined by the number of hours worked and the partner has complete discretion in the use of his time, provided he does not engage in other business activities. Rather, his income is based on his proprietary or ownership interest in the firm reflecting, for example, his ability to attract clients, solve problems and counsel others. Commissioner Frank P. Reiche filed a dissenting opinion. (Date Issued: October 6, 1980; Length: 5 pages, including dissenting opinion)

AO 1980-108: Bank Loans Made to New Party Presidential Candidate

Loans made by a consortium of banks to the National Unity Campaign, the principal campaign committee of Presidential candidate John B. Anderson, could be treated as bona fide loans, rather than as prohibited contributions, even though they would be secured by Mr. Anderson's expectation of receiving post-election public funding. (To be eligible for post-election public funding as a new party candidate, Mr. Anderson must receive five percent or more of the total votes cast in the general election.)

More specifically, the loans would not necessarily fall outside the "ordinary course of business" solely because the principal means of repayment would be the post election federal funds available to Mr. Anderson if he

receives at least five percent of the popular vote. Furthermore, the loans would not violate the Act's requirement that bank loans be "made on a basis which assures repayment" solely because Mr. Anderson's receipt of post-election financing is contingent on his obtaining five percent or more of the vote. The Commission noted that the risk of the candidate's failure to repay the loans was mitigated by a proposed Revolving Credit Agreement, which included the following risk-control mechanisms:

1. Under the "available commitments formula," the amount of funds available to the Anderson campaign on any given day would depend on Mr. Anderson's performance in the most recent opinion polls.
2. Total loans available to the Anderson campaign would not exceed $10 million.
3. All loans would have to be used solely to defray qualified campaign expenses.
4. In order to borrow at all, Mr. Anderson would have to be favored in the polls by no less than six percent of the voters.
5. A series of dollar limits and time restraints would be set on all loan transactions. The Agreement specifies, for example, that the Anderson campaign may not borrow additional funds within 10 days of the preceding borrowing or borrow more than a total of $6 million within 20 days of the Agreement.
6. Mr. Anderson would assign his rights to post-election funds to his principal campaign committee, which in turn would assign those rights to an agent representing the banks. Further, the Anderson campaign would irrevocably authorize the Commission to have all public funds paid directly to the agent.
7. Numerous provisions of the Agreement would safeguard the banks' first-priority security interest in any post-election public funds Mr. Anderson might receive.
8. The Anderson campaign would remain liable for the debt even if Mr. Anderson failed to receive post-election public funding.

The Commission expressly did not decide, however, whether any particular loan made pursuant to the Agreement would be considered a loan negotiated in the "ordinary course of business," because this decision would depend on many other factors involved in the particular loan transaction. The Commission therefore cautioned against any use of the opinion as a legal sanction for any particular loan transaction. Further, the Commission expressed no opinion on the application of other laws and regulations to the loans, including tax laws or state and federal banking laws. Vice Chairman John Warren McGarry and Commissioner Thomas E. Harris issued a concurring opinion. Commissioner Robert O. Tiernan issued a dissenting opinion. (Date Issued: October 6, 1980; Length: 17 pages, including concurring and dissenting opinions)

AO 1980-109: Candidate Support Provided by Subscription Periodical

Endorsement of candidates for federal office by *The Ruff Times* (a subscription periodical), including solicitations to their campaigns, would not constitute contributions to the candidates by Mr. Ruff, *The Ruff Times* or the subscription periodical's publisher. If a commentary in the periodical did solicit contributions to a candidate, the contributors would have to be instructed to forward their contributions **directly** to the candidate's campaign committee — and not to *The Ruff Times*. Nor would campaign advertising prepared and paid for by a candidate's committee and published in the periodical result in a contribution to the candidate, provided the candidate's campaign committee paid the usual and normal rate for the advertisements.

Commentaries in *The Ruff Times* endorsing specific candidates would not constitute contributions because Section 100.7(b)(2) of Commission Regulations specifically exempts from the definition of contribution "any cost incurred in covering or carrying a news story, commentary, or editorial by a . . . periodical publication." Further, "periodical publication" has been defined to mean a publication in bound pamphlet form appearing at regular intervals and containing articles of news, information, opinion or entertainment, whether of general or specialized interest, which ordinarily derives its revenue from subscriptions and advertising. (Date Issued: October 6, 1980; Length: 4 pages)

FEC PUBLIC APPEARANCES

In keeping with its objective of making information available to the public, the Commission accepts invitations to address public gatherings. This column lists upcoming scheduled Commission appearances, the name of the sponsoring organization, the location of the event and the name of the Commission's speaker. For additional information on any scheduled appearance, please contact the **sponsoring organization.**

11/3	Nippon Express Company, Ltd. Election Management Committees FEC, Washington, D.C. Chairman Max Friedersdorf Vice Chairman John Warren McGarry Dr. Gary Greenhalgh, Director, Clearinghouse
11/8	Southern Political Science Association Convention Atlanta, Georgia Gwenn Hofmann, Clearinghouse
11/15	New York University Review of Law and Social Change Colloquium New York, New York Charles N. Steele, General Counsel
11/20	Rutgers University Public Policy Analysis Class Newark, New Jersey Commissioner Frank P. Reiche

800 LINE

COORDINATED PARTY EXPENDITURES

The Public Communications Office receives numerous inquiries from the public on its toll-free line: **800/424-9530**. The following explanations are offered in response to questions that party committees frequently ask about coordinated expenditures (2 U.S.C. §441a(d)).

May state party committees make expenditures on behalf of federal candidates in the general election?

In addition to direct contributions, state party committees may make special expenditures, referred to as "coordinated party expenditures," on behalf of their party's candidates for the House and Senate. (These expenditures are also sometimes called "441a(d) expenditures" because they are provided for in §441a(d) of the Act.) These expenditures are subject to monetary limits and may be made only for a general election campaign, not for a primary election. Although they may be made in cooperation with a candidate, coordinated party expenditures are not considered contributions and do not count against the committee's contribution limit for a candidate. 11 CFR 110.7(b). The party committee – not the candidate – must actually make the expenditures and is responsible for reporting them.

May a local party organization make coordinated party expenditures?

Yes. A local party organization may make coordinated party expenditures, but only if the state party committee has designated it as an agent to do so.

If a state party committee designates a subordinate party committee to make coordinated expenditures, who is responsible for ensuring the state committee's limits are not exceeded?

The state committee monitors its spending limits by following the special reporting procedures detailed below.

Must a local party organization that makes coordinated party expenditures register as a political committee?

Maybe. Coordinated party expenditures made by a local party organization count toward the $1,000 threshold which would trigger the organization's registration as a political committee. (For complete information on registration thresholds for local party organizations, consult FEC Regulations at 11 CFR 100.5(c).)

May a national party committee make coordinated party expenditures on behalf of House and Senate candidates? If so, do separate spending ceilings apply to the expenditures made respectively by the state and national party committees?

Yes. The national party committee may also make coordinated party expenditures on behalf of the party's House and Senate nominees in the general election. A separate ceiling applies to the expenditures made by the national party. 11 CFR 110.7(b)(1).

May state and national party committees also make coordinated expenditures to support their party's Presidential ticket in the general election?

Yes and no. Only the national committee may make coordinated expenditures on behalf of the party's Presidential nominee, although state and local party committees may be designated by the national committee as agents for making Presidential coordinated party expenditures. 11 CFR 110.7(a). A separate spending limit applies to the expenditures the national committee makes on behalf of the Presidential ticket. Moreover, the national committee is responsible for ensuring this limit is not exceeded if it designates a state or subordinate party committee to make these expenditures.

What are the spending ceilings?

The national and state party committees may each spend:

- for *House candidates,* $10,000 (plus a cost of living adjustment); and
- for *Senate candidates, or House candidates from states with one Congressional district,* $20,000 (plus a cost of living adjustment); or $.02 x the state voting age population (VAP)(plus a cost of living adjustment), whichever is greater. 11 CFR 110.7(b).

A national party committee may also spend up to $.02 x VAP of the United States (plus a cost of living adjustment) on behalf of its *Presidential nominee.* 11 CFR 110.7(a). (The 1980 limits for coordinated expenditures are detailed on page 5 of the March 1980 *Record.*)

How are coordinated party expenditures reported?

A party committee reports its total coordinated expenditures on the Detailed Summary Page of Form 3X. In addition, the committee must itemize the expenditures, regardless of amount, on Schedule F. The campaign committees of the candidates for whom the expenditures are made do **not** report these expenditures.

Are there special reporting procedures for a local party organization that has been designated by the state party committee to make coordinated party expenditures?

Yes. To help the state party committee monitor spending limits for coordinated expenditures, the Commission recommends the special reporting methods outlined below. Alternatively, a state committee may use another method of controlling and reporting coordinated party expenditures if the plan is submitted to and approved by the Commission in advance. 11 CFR 110.7(c).

1. *Unregistered Local Organizations.* A local party organization not registered as a political committee discloses its coordinated party expenditures on Schedule F, which it then submits to the state committee. The state committee then attaches the Schedule F to the report of receipts and disbursements it files with the Commission.
2. *Registered Local Committees.* A registered local party political committee files a Schedule F with its regularly scheduled report (Form 3X), itemizing all coordinated party expenditures it has made since the last report filed and recording the total on the Detailed Summary Page. In addition, the committee forwards a copy of its completed Schedule F to the state committee.

3. *State Committees.* A state party committee also files a Schedule F with its regularly scheduled report, itemizing only those coordinated party expenditures that the state committee itself has made and recording the total of its own expenditures on the Detailed Summary Page. The state committee also files, as attachments to its own report, the Schedule F reports submitted by all local organizations and committees that have made coordinated party expenditures. This means, of course, that the local organizations and committees must submit their Schedule F reports to the state committee sufficiently in advance of the filing date to permit the state committee to file on time.

STATISTICS

FEC REPORTS ON FINANCIAL ACTIVITY OF NONPARTY POLITICAL COMMITTEES

The FEC released summary figures on September 25, 1980, indicating that nonparty political committees had contributed approximately $25 million to federal candidates from January 1, 1979, through June 30, 1980. These committees also independently spent approximately $1.4 million to support federal candidates. The figures released are part of an ongoing study of federal campaign finance activity entitled *1979-1980 FEC Reports on Financial Activity.*

Interim Report No. 9, the first study of nonparty financial activity, indicated that nonparty political committees had:

- raised $85.3 million;
- spent $61.4 million;
- contributed $25 million to federal candidates; and
- spent $1.36 million independently in support of federal candidates.

NOTE: The figures in this interim report are not final; they are subject to change after all 1979-80 related reports and amendments have been received.

The chart below lists the ten largest contributors to federal candidates from January 1, 1979, through June 30, 1980. The entire four-volume set of *Interim Report No. 9* is available for purchase ($5 per volume) from the FEC's Public Records Office, 1325 K Street, N.W., Washington, D.C. 20463. Telephone: 202/523-4181 or toll free 800/424-9530. Or each of the following volumes of *Interim Report No. 9* may be purchased separately:

Vol I: Summary Tables
Vol. II: State and Local Party Detailed Tables
Vol. III: Non-Party Detailed Tables (Corporate and Labor)
Vol. IV: Non-Party Detailed Tables (No Connected Organization, Trade/Membership/Health, Cooperative, Corporation Without Stock)

"TOP 10" POLITICAL COMMITTEE CONTRIBUTORS

Name of Contributor	Contributions to Federal Candidates 1/79 - 6/80*
1. American Medical Political Action Committee (American Medical Association)**	$596,435
2. Automobile and Truck Dealers Election Action Committee (National Automobile Dealers Association)	$512,526
3. Realtors Political Action Committee (National Association of Realtors)	$465,647
4. UAW-V-CAP (United Auto Workers Voluntary Community Action Program) (United Auto Workers)	$449,816
5. AFL-CIO COPE Political Contributions Committee (AFL-CIO)	$381,922
6. Carpenters' Legislative Improvement Committee (Carpenters and Joiners of America)	$333,408
7. Committee for Thorough Agricultural Political Education of Associated Milk Producers, Inc. (Associated Milk Producers, Inc.)	$331,489
8. Machinists Non-Partisan Political League (Machinists and Aerospace Workers)	$325,785
9. Transportation Political Education League (United Transportation Union)	$302,435
10. National Association of Life Underwriters Political Action Committee (National Association of Life Underwriters)	$295,637

*Federal candidates include House, Senate and Presidential candidates seeking election in 1980, candidates campaigning in future elections and inactive candidates retiring debts of former campaigns.

**The organization sponsoring each political committee is indicated in parenthesis.

FEC REPORTS ON FINANCIAL ACTIVITY OF CANDIDATE POLITICAL COMMITTEES

U.S. Senate and House candidates have raised $126 million and spent more than $103 million on their 1979-1980 election efforts, according to summary figures released by the Commission on October 1, 1980. These figures are part of the *1979-1980 FEC Reports on Financial Activity* of federal campaigns.

The first study of U.S. Senate and House campaigns, *Interim Report No. 8,* is based on reports filed with the Commission from January 1, 1979, through June 30, 1980. (Some additional total receipt and disbursement information is also included for Congressional primaries held in August.) The study provides an itemized account of the contributions and expenditures made on behalf of the 2,184 Congressional candidates. For example:

- Contributions from nonparty political committees to the candidates totaled $20.8 million;
- Party committees contributed $1.8 million and spent $.3 million on behalf of the candidates; and
- Independent expenditures by nonparty committees totaled $.04 million on behalf of the candidates and $.8 million in opposition to them.

The study also summarizes the financial activity of "candidates," as follows:

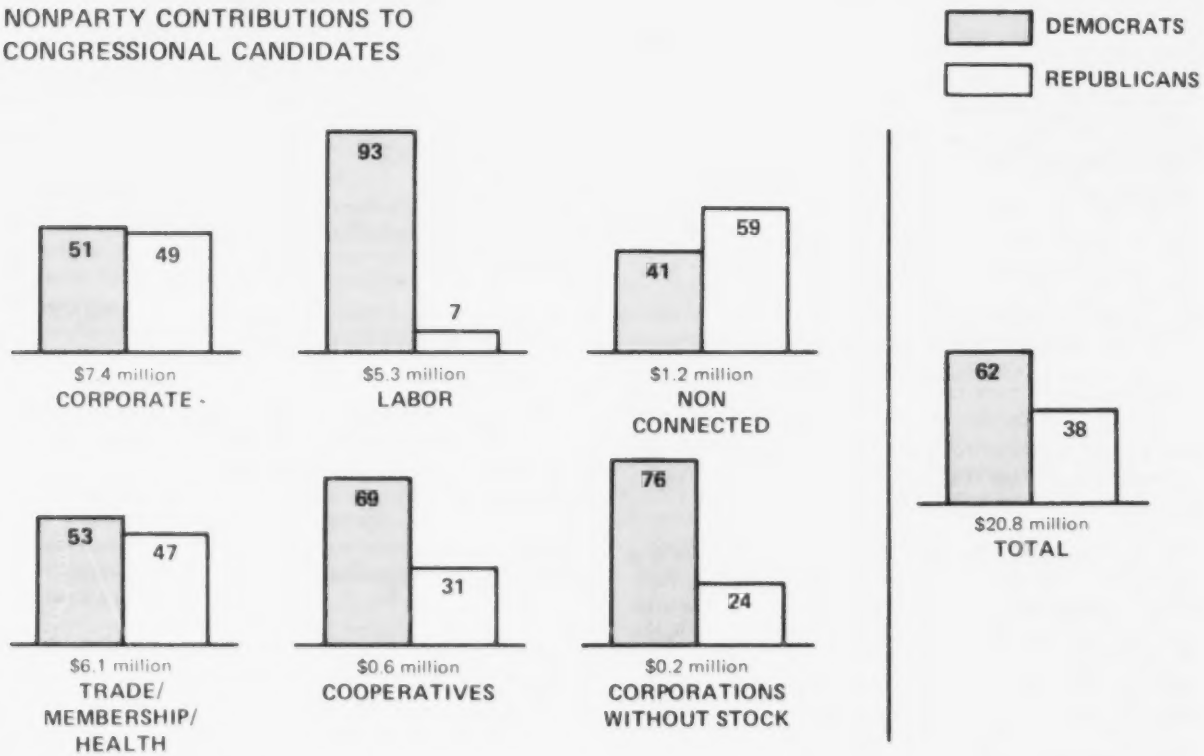
Type of Candidate	Funds Raised*	Funds Spent*
Senate candidates	$56.5	$47.2
House candidates	69.3	55.8
Democrats	69.7	55.4
Republicans	56.0	47.5
Others	.1	.1
Incumbents	60.5	41.9
Challengers	41.8	38.7
Open Seat Races	23.5	22.4

*All figures are in millions of dollars.

NOTE: Figures provided in the study reflect the financial activity related to six special elections held in 1979-1980, in addition to the 1980 primary and general elections.

Copies of the *1979-1980 FEC Reports on Financial Activity, Interim Report No. 8, U.S. Senate and House Campaigns* may be purchased at a cost of $5 from the Public Records Office, 1325 K Street, N.W., Washington, D.C. 20463. For more information, call: 202/523-4181 or toll free 800/424-9530.

NONPARTY CONTRIBUTIONS TO CONGRESSIONAL CANDIDATES



These graphs show, on a percentage basis, how each type of nonparty committee divided its contributions between 1979-80 Democratic and Republican Congressional candidates. (1/1/79-6/30/80)

Source: *1979-80 FEC Reports on Financial Activity of 1979-80 U.S. Senate and House Campaigns, Interim Report No. 8.*

THE LAW IN THE COURTS

NEW LITIGATION

Fred P. Ames v. FEC et al.

Plaintiff seeks an injunction from the U.S. District Court for the District of Columbia which would prevent the FEC from certifying public funds to the two major political parties. Plaintiff also demands that the FEC provide a grant of $4 million to the Concerned Citizens of America.

(U.S. District Court for the District of Columbia, Docket No. 80-2051, August 13, 1980.)

The National Republican Senatorial Committee v. FEC

Pursuant to 2 U.S.C. §437g(8)(A), the National Republican Senatorial Committee seeks review by the U.S. District Court for the District of Columbia of a Commission decision to dismiss a complaint brought by plaintiff. Plaintiff had brought the complaint against both the Hart for Senate Campaign Committee (the Committee) and Linda Ronstadt, who had donated entertainment services to the Committee. Contending that the Commission's decision was not based on facts and the applicable law because the defendants had not given the Commission an accurate account of the fundraiser, plaintiff seeks a Court decision directing the Commission to enforce provisions of the Act applicable to the complaint.

(U.S. District Court for the District of Columbia, Docket No. 80-2266, September 6, 1980.)

Barry Commoner v. FEC et al.

Plaintiff sought a ruling from the U.S. District Court for the District of Columbia that the Commission's September 16, 1980, decision dismissing a complaint brought by plaintiff was contrary to law. Plaintiff asked the Court to retain jurisdiction over the complaint. (In the complaint, plaintiff and the Citizens Party, a new party, had alleged that the Presidential debates scheduled for the general election campaign, and sponsored by the League of Women Voters Education Fund, violated the FEC's debate regulations by being partisan.) Plaintiff further sought the Court's declaratory judgment that the method of staging debates used by the League of Women Voters Education Fund was illegal. Plaintiff asked the Court to enjoin the League from sponsoring subsequent debates or, alternatively, to compel the League to include plaintiff in the debates.

On October 1, 1980, Mr. Commoner filed a motion with the Court to dismiss the case without prejudice.

(U.S. District Court for the District of Columbia, Docket No. 80-2389, September 19, 1980.)

Felice M. Gelman and Citizens for LaRouche, Inc. v. FEC

Plaintiffs seek an injunction from the U.S. District Court of the District of Columbia enjoining the Commission from conducting investigations of volunteers and contributors to Citizens for LaRouche, Inc., the principal campaign committee of Presidential candidate Lyndon H. LaRouche. Plaintiffs further seek a declaratory judgment from the Court that such investigations are being conducted in violation of the Act and Commission Regulations at 11 CFR Part 111.

(U.S. District Court for the District of Columbia, Docket No. 80-2471, October 1, 1980.)

COMPLIANCE

EXPEDITED COMPLIANCE PROCEDURES FOR THE GENERAL ELECTION

On September 25, 1980, the Commission approved procedures for expediting complaints filed with the Commission within 30 days of the general election. These procedures apply only to federal candidates running in the general election and to political committees making contributions and expenditures in connection with the general election.

Under the expedited procedures, the Commission will continue to follow all the steps specified under the Commission's normal compliance procedures. 11 CFR Part 111. (See also the April *Record*, p. 6.) The time provided for certain steps, however, will be reduced.

After the Commission has received a complaint, for example, it will notify the respondent within 24 hours (rather than five days) that a complaint has been filed against him or her. The respondent will have 15 days in which to reply to the complaint. Similarly, the Commission will inform the complainant within 24 hours after receiving the complaint (rather than five days) that the complaint has been received and is being processed.

The Commission may decide to dismiss the complaint before receiving the respondent's reply. If it is possible to dismiss a complaint on this basis, the Commission will attempt to do so within five days after the complaint has been filed. If the complaint is dismissed, the complainant and respondent will be notified by mailgram.

If the complaint cannot be dismissed on its face, the Commission will make no decision until the receipt of the respondent's reply or 15 days after the respondent receives notification of the complaint, whichever comes first. If the Commission decides there is "reason to believe" the Act has been violated, it will notify the respondent and complain-

continued

ant by mailgram (or as soon as practicable) and send a follow-up letter by the close of business on the following day. (Under normal procedures, the Commission allows five days to inform respondents and complainants by mail.)

If the Commission determines before the November 4th general election that there is "probable cause to believe" the Act has been violated, **and if the respondents are involved in the general election,** the Commission will formally seek a conciliation agreement with the respondents for at least 15 days (rather than 30).

FEC PUBLISHES NAMES OF NONFILERS

On September 10, 1980, the Commission released the names of 280 committees authorized by candidates which had failed to file their semiannual reports of receipts and expenditures. The reports were due by close of business on July 31. An FEC press release issued September 10 provides state-by-state details on those committees which failed to file their July semiannual report. The release may be obtained from the FEC's Office of Public Records. Call 202/523-4181 or toll free 800/424-9530.

Under the 1979 Amendments to the Federal Election Campaign Act, if a candidate is not running for office in 1980, the candidate's campaign committee must file two semiannual reports if the committee either received contributions or made expenditures (including payment of debts) in excess of $5,000. One report must be filed by July 31, the other by January 31, 1981. Each semiannual report must include information on all financial activity occurring during the six-month period.

Further Commission action against nonfilers and late filers will be decided on a case-by-case basis. The Federal Election Campaign Act gives the Commission broad authority to initiate enforcement actions against nonfilers, including civil court enforcement and the imposition of civil penalties.

SUMMARY OF MUR's

Selected compliance cases, which have been closed and put on the public record, are summarized in the *Record.* Compliance matters stem from possible violations of the Federal Election Campaign Act of 1971, as amended, which come to the Commission's attention either through formal complaints originating outside the Commission or by the FEC's own monitoring procedures. The Act gives the FEC the exclusive jurisdiction for the civil enforcement of the Act. Potential violations are assigned case numbers by the Office of General Counsel and become "Matters Under Review" (MUR's). All MUR investigations are kept confidential by the Commission, as required by the Act.

MUR's may be closed at any one of several points during the enforcement process, including when the Commission:

- Determines that no violation of the Act has occurred;
- Determines that there is no reason to believe or no probable cause to believe a violation of the Act has occurred;
- Enters into a conciliation agreement with the respondent;
- Finds probable cause to believe a violation has occurred and decides to sue; or
- Decides at any point during the enforcement process to take no further action.

After the MUR is closed and released by the Office of General Counsel, the Commission makes the MUR file available to the public. This file contains the complaint, the findings of the General Counsel's Office and the Commission's actions with regard to the case, including the full text of any conciliation agreement. The Commission's actions are not necessarily based on, or in agreement with, the General Counsel's analysis.

Selection of MUR's for summary is made only from MUR's closed after January 1, 1979. The *Record* article does not summarize every stage in the compliance process. Rather, the summary provides only enough background to make clear the Commission's final determination. The full text of these MUR's and others which were closed between 1976 and the present are available for review and purchase in the Commission's Public Records Office.

MUR 1032: Creditor Files Complaint Against Candidate Committee

On March 4, 1980, the Commission voted to take no further action in the case of a Presidential candidate committee that responded satisfactorily to a reason to believe finding.

Complaint: On September 26, 1979, a creditor of the candidate committee filed a complaint alleging that the committee had failed to pay a debt owed to the company, thus violating the Act by breaking an oral contract. The company also alleged that the committee, by failing to continuously report outstanding debts or file reports after its July 1978 quarterly report, had violated 2 U.S.C. §§434(b)(12) and 434(a), respectively.

General Counsel Reports: The General Counsel pointed out that, as to the breach of contract, no statute within the Commission's jurisdiction had been violated. Although the Regulations address the forgiveness of debts owed to corporations, there is nothing in the Act or Regulations granting the Commission jurisdiction to enforce the payment of debts owed by a political committee. The General Counsel's review of the committee's reports, however, substantiated the other alleged violations. The committee had last disclosed its debts in August 1976 and had not filed any reports since July 1978.

Commission Determination: On December 14, 1979, the Commission found reason to believe the committee had violated the §434 reporting requirements. The Committee then complied with the Act by filing the necessary reports and disclosing information on its debts. The Commission, on March 3, 1980, decided to take no further action in the matter and closed the file.

CLEARINGHOUSE

SUBSCRIPTIONS

- *Election Law Updates* is a quarterly series which summarizes all new state and federal election legislation. $11.00 per year.
- *Election Case Law* is a quarterly series which summarizes recent state and federal litigation relating to election matters. $10.00 per year.

You may order these subscriptions by mail from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Identify report title. Enclose a check or money order for subscription price(s) payable to Superintendent of Documents.

CHANGE OF ADDRESS

Political Committees

Registered political committees are automatically sent the *Record*. Any change of address by a registered committee must, by law, be made in writing as an amendment to FEC Form 1 (Statement of Organization) and filed with the Clerk of the House, the Secretary of the Senate or the FEC, as appropriate.

Other Subscribers

Record subscribers (who are not political committees), when calling or mailing in a change of address, are asked to provide the following information:

1. Name of person to whom the *Record* is sent.
2. Old address.
3. New address.
4. Subscription number. The subscription number is located in the upper left hand corner of the mailing label. It consists of three letters and five numbers. Without this number, there is no guarantee that your subscription can be located on the computer.

REGULATIONS

STATUS OF FEC REGULATIONS

Regulations*	Date Sent to Congress	Federal Register Publication	Date Prescribed** by the Commission
11 CFR 9033.9 Suspension of Primary Matching Fund Payments	4/10/80	4/15/80 (45 FR 25378)	7/3/80
11 CFR Part 4 Public Records and the Freedom of Information Act	Not applicable	5/13/80 (45 FR 31291)	6/12/80
11 CFR Part 5 Access to Public Disclosure Division Documents	Not applicable	5/13/80 (45 FR 31292)	6/12/80
11 CFR, Parts 100 and 110 Contributions to and Expenditures by Delegates to National Nominating Conventions	5/14/80	5/23/80 (45 FR 34865)	8/7/80
11 CFR, Parts 100, 106, 110, 140-146 and 9001-9007 Public Financing of Presidential General Election Campaigns	6/13/80	6/27/80 (45 FR 43371)	9/5/80

*The chart is cumulative, listing all amendments to the FEC Regulations proposed after the April 1980 edition of 11 CFR was published, including any technical amendments.

**The Commission may prescribe its regulations 30 legislative days after it has transmitted them to Congress, provided neither the House nor the Senate disapproves them during this period.

FEDERAL ELECTION COMMISSION
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THE FEDERAL ELECTION COMMISSION

RECORD

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Volume 6, Number 12

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REPORTS

REPORTS DUE

During December and January, several reports are required under the Federal Election Campaign Act. The following paragraphs give an overview of the reporting requirements. For detailed information, committees should consult the notices sent to them directly or contact the Office of Public Communications (see below).

Post-General Election Reports (December)

All political committees (except those authorized by candidates who did **not** run in the general election) are required to file a post-general election report by December 4, 1980, regardless of their level of financial activity. The report should cover all financial activity since the last report (or the date of registration, whichever is later) through November 24, 1980.

Filing Alternatives for Some Authorized Presidential Committees (December)

Authorized committees of Presidential candidates who did not seek election in the general election, and whose committees have filed on a monthly basis during 1980, must file either:

1. *A post-general election report* by December 4, if the committee already filed a pre-general election report; **or**
2. *A monthly report* by December 20, if the committee did not file a pre-general election report (but instead filed a monthly report in November). The December monthly report should cover all financial activity between November 1 and November 30, 1980.

Year-End Reports (January)

All political committees currently registered with the Commission must file a year-end report by January 31, 1981, regardless of the level of financial activity or whether they supported candidates in the 1980 federal elections. (The requirement applies, for example, to committees authorized by Senate candidates seeking election in 1982 or committees authorized by candidates who ran in elections prior to 1980.) The year-end report must include all reportable transactions occurring since the last full report filed, or (if the committee is new) from the date of registration, through December 31, 1980. Complete reports must also include appropriate schedules (e.g., Schedule A for itemized receipts and Schedule B for itemized disbursements).

Committees that do not intend to receive contributions or make expenditures, and that have no outstanding debts, may be eligible to terminate. For details on termination, see the *800 Line* article, p. 3.

Forms and additional information will be sent to all registered committees. Questions and requests for forms should be addressed to the Office of Public Communications, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463; or call 202/523-4068 or toll free 800/424-9530.

PUBLIC FINANCING

FEC CERTIFIES PAYMENTS TO NEW PARTY CANDIDATE

Payments

On November 13, 1980, the Commission certified a grant of $4,164,906.24 to John B. Anderson and his running mate Patrick J. Lucey. This certification, the first made to a new party candidate in the history of the public financing of Presidential elections, was based on procedures established by the Commission on November 3, 1980 (see below). The grant, which is one percent less than Mr. Anderson's full entitlement of $4,206,976, is based on the Commission's unofficial vote count of the Presidential election. The unofficial vote returns indicated that Mr. Anderson had received 5,581,379 votes (or approximately 6.5 percent of the total popular votes cast in the election). Mr. Anderson's final entitlement will be adjusted to reflect the official vote returns. Further, the Anderson campaign may be required to repay any federal funds that are not needed to defray outstanding campaign debts.

New Certification Procedures

On November 3, 1980, the Commission approved procedures for certifying public funds to new party Presi-

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dential candidates. These procedures describe the certifications and agreements the candidates must sign before the general election as well as the post-election procedures for certifying funds.

To qualify for post-election public funding, the Presidential and Vice Presidential candidates of a new party must submit certain written agreements and certifications to the Commission within 14 days after they qualify to appear on the general election ballot in 10 or more states.* In the letter of agreements, both candidates must agree to furnish records of campaign expenses, permit the conduct of an audit, identify the person authorized to receive payments on their behalf and designate a campaign depository. In the written certifications, the candidates must certify that they will comply with the overall spending limits, the limits on the use of contributions and the personal spending limits. 11 CFR 9003.1 and 9003.2.

Under the new procedures, the Commission certifies public funds to a new party candidate who receives at least five percent of the total votes cast in the Presidential election, provided the candidate submitted the required agreements and certifications **before** the election. The Commission bases its initial determination of a new party candidate's share of the total popular votes on the unofficial election results reported by the News Election Service and state election officials. In the event of a disparity, the Commission relies on results obtained from state officials.

If the candidate receives five percent or more of the total popular vote by this informal calculation, the Commission certifies an initial payment from the U.S. Treasury within 10 days of determining the candidate's eligibility. This payment is proportional to the grant provided the major party candidates, less one percent. (The formula for calculating the proportional payment is spelled out in Section 9004(a)(3) of the Presidential Election Campaign Fund Act.) The candidate may challenge the Commission's initial determination in writing within 15 days.

No later than 10 days after receiving the official election results, the Commission makes a final determination of the candidate's appropriate payment. At that time, the Commission may adjust its initial payment, if necessary. 26 U.S.C. §9004(a)(3). Further, candidates receiving post-election funds must comply with the audit and examination procedures provided by 26 U.S.C. §9007 and 11 CFR 9007.

*The deadline may be extended with the approval of the Commission. However, the absolute deadline for submitting the agreements and certifications is the day before the general election.

INFORMATION

PRESIDENTIAL CANDIDATES ON 1980 BALLOTS

Twenty-one Presidential candidates, running under various independent and party listings, appeared on the November 4, 1980, general election ballots of the 50 states and the District of Columbia, according to a survey by the Federal Election Commission. In the 1976 Presidential elections, a total of 15 candidates were listed on the 50 state and District of Columbia ballots. Only four of the 1980 Presidential candidates appeared on the ballots in all of the 51 jurisdictions surveyed: John Anderson, Jimmy Carter, Edward Clark and Ronald Reagan.

Information on the survey was provided to the Federal Election Commission by individual Secretaries of State and state election officials. It is current through October 22, 1980. The following alphabetical listing indicates each candidate in the 1980 Presidential general election and his or her party affiliation(s):

Presidential Candidate	Party Affiliations
1. Anderson, John	National Unity, Independent, Anderson Coalition, Liberal, Anderson Party, Independent (Republican), The Anderson Alternative
2. Bubar, Benjamin	Statesman, Independent
3. Carter, Jimmy	Democratic
4. Clark, Edward	Libertarian
5. Commoner, Barry	Citizens
6. Congress, Richard	Independent
7. DeBerry, Clifton	Socialist Workers
8. Gahres, Bill	American, Independent
9. Greaves, Percy	American Party
10. Griswold, Deidre	Workers World, Independent
11. Hall, Gus	Communist
12. Lynen, Kurt	Middle Class Candidate

The RECORD *is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: Max L. Friedersdorf, Chairman; John Warren McGarry, Vice Chairman; Joan D. Aikens; Thomas E. Harris; Frank P. Reiche; Robert O. Tiernan; J.S. Kimmitt, Secretary of the Senate, Ex Officio; Edmund L. Henshaw, Jr., Clerk of the House of Representatives, Ex Officio. For more information, call 202/523-4068 or toll-free 800/424-9530.*

Presidential Candidate	Party Affiliations
13. McCormack, Ellen	Respect For Life
14. McLain, Harley	National Peoples League
15. McReynolds, David	Socialist Party
16. Pulley, Andrew	Socialist Workers Party
17. Rarick, John	Independent, American
18. Reagan, Ronald	Republican
19. Shelton, Frank	American
20. Smith, Margaret	Peace and Freedom
21. Wendelken, Martin	Independent

800 LINE

In recent weeks, the Public Communications Office has received inquiries on how political committees may terminate their registration and, hence, their reporting obligations under the Act. The following article, reprinted (with a few minor changes) from the June 1980 issue of the *Record*, is offered in response to these questions. For further information, call the Commission on its toll-free line: (800)424-9530.

TERMINATING REPORTING OBLIGATIONS

Following the 1980 general elections, many candidate committees may wish to terminate their reporting obligations under the Act. The explanation given below outlines procedures for winding down campaign activity, i.e., liquidating campaign debts, using excess campaign funds and terminating committee registration (and thus reporting obligations). All legal citations refer to FEC Regulations.

FORGIVING DEBTS

General Rule

If a committee fails to pay a campaign debt in a timely fashion consistent with normal business or trade practice, the debt in effect becomes a contribution made by the creditor to the committee, unless the creditor has made a commercially reasonable attempt to collect the debt. 11 CFR 100.7(a)(4). Contributions made under such circumstances may violate the Act. For example, if a committee indebted to a corporation fails to pay the debt, the debt may result in a prohibited contribution from the corporation. Or, as another example, continued nonpayment of a debt owed to a person who may lawfully make contributions may cause the creditor to exceed the Act's $1,000 per election contributor limit.

Rules for Corporate Creditors

Debt Treated in Commercially Reasonable Manner. A corporate creditor may not forgive debts for less than the amount owed unless the creditor and debtor have treated the debt in a **commercially reasonable manner**. This means that:

1. Credit was extended "in the ordinary course of business" with terms substantially similar to those granted to nonpolitical debtors of similar credit risk;
2. The debtor made all reasonable efforts to retire the debt; and
3. The creditor pursued remedies in a manner similar to those used to seek payment from nonpolitical debtors. 11 CFR 114.10.

Statement of Settlement. If a debt owed to a corporation is settled for less than the amount owed and the debtor wishes to terminate the reporting status, the corporate creditor and/or debtor (committee) must file a Statement of Settlement with the FEC for Commission approval before the committee terminates. This Statement must include:

1. The initial terms of credit;
2. The steps the debtor took to extinguish the debt;
3. The remedies pursued by the creditor; and
4. The terms of settlement. 11 CFR 114.10.

Rules for Noncorporate Creditors

Debt Treated in Commercially Reasonable Manner. A noncorporate creditor may demonstrate to the Commission that it has made a "commercially reasonable attempt" to collect a debt owed to it by a committee, and thereby settle the debt without the settlement being considered a contribution, provided that: the credit was extended in connection with providing goods and/or services to a political committee in the normal course of a business or professional enterprise. (A debt involving only the lending of money could not, therefore, be forgiven without a contribution being made.)

FEC Review of Debt Settlement. The settlement of any debt owed to a noncorporate creditor by a committee is subject to FEC approval if either:

1. The amount of the debt forgiven causes the creditor to exceed contribution limitations (when added to any other contributions made by the creditor to the same candidate); or
2. The creditor wishes the entire amount of the forgiveness to be regarded as a debt settlement (and so notifies the Commission), rather than as a contribution in-kind.

In either case, a Statement of Settlement similar to that required when corporate debts are settled (above) would have to be submitted to the Commission by the creditor and/or debtor. (Directive 3, May 10, 1978.)

EXCESS CAMPAIGN FUNDS

Contributions received by the candidate or his/her committee which, in the candidate's view, exceed the amount of funds needed to defray campaign expenditures may be used for the following purposes:

1. Future election. 11 CFR 110.3(a)(2)(iii) and (iv).
2. Defrayal of federal officeholder expenses. 11 CFR 113.2(a).

continued

3. Donations to charity. 11 CFR 113.2(b).
4. Unlimited contributions to national, state or local party committees. 11 CFR 113.2(c).
5. Repayment of loans made by the candidate to his/her committee. 11 CFR 113.2(d).
6. Any other lawful purpose, except personal use.* 11 CFR 113.2(d).

TERMINATING REPORTING STATUS

Termination by Political Committees

A political committee may terminate its registration (and reporting obligations) only when all its debts and obligations have been extinguished and after it no longer intends to receive any contributions or make any disbursements. A principal campaign committee may terminate only when it has satisfied these requirements and when all the debts of its affiliated authorized committees have been extinguished. 11 CFR 102.3.

Political committees terminate their reporting status by filing a **Termination Report.** It may be filed at anytime on FEC Form 3 (3X or 3P) or by a written statement containing the same information. 11 CFR 102.3(a). The **Termination Report** must disclose:

1. All receipts and disbursements not previously reported, including an accounting of the retirement of all debts; and
2. The disposition of all residual funds.

Administrative Termination by FEC

The Commission, upon its own initiative or upon the request of a political committee, may administratively terminate a committee's reporting obligations if the committee's financial activity has been minimal during the previous year. For details on administrative termination, consult 11 CFR 102.4.

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*The prohibition on using excess funds for personal use does not apply to candidates who were Members of Congress on January 8, 1980.

CLEARINGHOUSE

SUBSCRIPTIONS

- *Election Law Updates* is a quarterly series which summarizes all new state and federal election legislation. $11.00 per year.
- *Election Case Law* is a quarterly series which summarizes recent state and federal litigation relating to election matters. $10.00 per year.

You may order these subscriptions by mail from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Identify report title. Enclose a check or money order for subscription price(s) payable to Superintendent of Documents.

OPINIONS

ADVISORY OPINION REQUESTS

Advisory Opinion Requests (AOR's) pose questions on the application of the Act or Commission Regulations to specific factual situations described in the AOR. The following chart lists recent AOR's with a brief description of the subject matter, the date the requests were made public and the number of pages of each request. The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR	Subject	Date Made Public	No. of Pages
1980-122	Use of contributions earmarked for general election to retire debts of primary election.	10/17/80	1
1980-123	Excess primary campaign funds used for thank you notes to campaign staff.	10/20/80	1
1980-124	Use of trust funds (of unknown source) for federal elections.	10/20/80	8
1980-125	Receipt, use and reportable value of $100-contribution made in silver dollars.	10/21/80	5
1980-126	Political committee status for individual engaging in get-out-the-vote activity.	10/21/80	4
1980-127	Federal/nonfederal accounts established by state party committee; allocation of debts.	10/24/80	9
1980-128	Corporation's distribution of position paper on national issues to federal candidates and the general public.	10/27/80	26
1980-129	Corporate status of corporation organized pursuant to Alaska Native Claims Settlement Act.	10/27/80	1
1980-130	Funds used by state committee to repay loan from federal committee.	10/30/80	1
1980-131	Application of national party committee contribution and expenditure limits to two committees that support independent Presidential candidate.	11/4/80	4
1980-132	Contribution from partnership that has one corporate partner.	11/7/80	1
1980-133	Solicitation to labor PAC through $1-checkoff from membership dues.	11/10/80	2
1980-134	Application of limits to contributions to primary and general election campaigns of independent Senate candidate.	11/13/80	2

AOR	Subject	Date Made Public	No. of Pages
1980-135	Payments made by corporation to indemnify staff of its separate segregated fund against legal liability.	11/14/80	2
1980-136	Artwork given to creditors as debt settlement by Presidential primary committee.	11/14/80	1
1980-137	Senate candidate's use of his corporation's personnel and equipment to produce computerized FEC reports.	11/18/80	1
1980-138	Senator-elect's status as federal officeholder; use of excess campaign funds for winding down campaign, transition activities and living expenses.	11/19/80	2

ALTERNATE DISPOSITION OF ADVISORY OPINION REQUEST

In response to **AOR 1980-112** (post-election public funding used by new party candidate for loan repayments) the General Counsel informed the requester in a letter issued on November 18, 1980, that the request: 1) did not qualify as an AOR because it posed a hypothetical situation (11 CFR 112.1(b)) and 2) was rendered moot by the vote results of the 1980 Presidential general election.

ADVISORY OPINIONS: SUMMARIES

An Advisory Opinion (AO) issued by the Commission provides guidance with regard to the specific situation described in the AOR's. Any qualified person who has requested an AO and acts in accordance with the opinion will not be subject to any sanctions under the Act. Other persons may rely on the opinion if they are involved in a specific activity which is indistinguishable in all material aspects from the activity discussed in the AO. Those seeking guidance for their own activity, however, should consult the full text of an AO and not rely only on the summary given here.

AO 1980-103: State Party's Distribution of Tax Checkoff Funds to Federal Candidates

Since the North Carolina State Democratic Executive Committee (the State Party), a multicandidate committee, exercises control over funds which are accumulated through a state tax checkoff and distributed to Democratic Congressional candidates, the funds would constitute contributions from the State Party. They are subject to the $5,000 per candidate, per election, contribution limit.

The source of the funds is the North Carolina Election Campaign Fund, provided for by state law and funded by individuals who check off a dollar from their taxes on their state income tax forms. The state law does not, however, specify a formula for distributing the funds to eligible candidates. This decision is made by a committee comprised of the State Party chairman, Party treasurer and the eligible candidates. The State Party would therefore exercise control over allocating the funds, rather than simply acting as a distribution agent or conduit. (Date Issued: October 10, 1980; Length: 3 pages)

AO 1980-110: Local Party Organization's Status as a Political Committee

The local Greenburgh Democratic Campaign Committee (the local committee) may use $2,250 in contributions, which it had received from two candidates for state office, a Congressional candidate and two local political committees, to rent a campaign headquarters and provide phone services, volunteer activities and mailings for the three candidates. The local committee would not become a political committee subject to the Act's registration and reporting requirements provided:

1. Total costs incurred by the local committee for activities exempted from the Act's definition of "contribution" and "expenditure" did not exceed $5,000;
2. The cost of the phone services benefitting the Congressional candidate did not exceed $1,000; and
3. The local committee made no other "expenditures" or "contributions" on behalf of the Congressional candidate.

Although the Act specifically exempts from the definition of "contribution" and "expenditure" payments for slate cards and campaign materials used in connection with volunteer activities (e.g., campaign pins, bumper stickers and handbills), the local committee would have to register and report as a political committee if such costs exceeded $5,000. The costs of phone services provided on behalf of the Congressional and local candidates would, however, be considered in-kind contributions to each candidate in proportion to the benefit each candidate reasonably expected to derive from the services. 11 CFR 106.1. Therefore, if the amount attributable to the Congressional candidate exceeded $1,000, the local committee would be required to register and report as a political committee. (Date Issued: October 10, 1980; Length: 4 pages)

AO 1980-111: Separate Segregated Fund Established by Trade Association With Dues-Paying Foreign Members

The Portland Cement Association (the Association), a trade association whose members include dues-paying foreign corporations, may pay the costs of establishing, administering and soliciting contributions to a separate segregated fund (the fund). Moreover, contributions made by the fund will not violate the Act's prohibition on contributions by foreign nationals. 2 U.S.C. §441e.

The Association's payments for establishing and administering the fund would be permissible because:

1. The Association itself is not a "foreign national" or a "foreign principal" but a discrete corporation organized under United States laws with its principal place of business in the United States; and

continued

2. The Association will not allow foreign nationals to exercise decision-making authority over the fund's activities.

Contributions made by the fund would be lawful because the Association does not plan to solicit or accept contributions from foreign nationals.

The Commission noted that it had authority to audit the fund's activities, including its decision-making processes. 2 U.S.C. §§437d and 438. Commissioner Thomas E. Harris filed a dissenting opinion. (Date Issued: October 16, 1980; Length: 3 pages, including dissenting opinion)

AO 1980-113: Disposition of Excess Campaign Funds

The Zell Miller for U.S. Senate Committee (the Committee) may use its excess campaign funds to:

1. Establish campaign funds for any of Mr. Miller's future campaigns for federal, state or local office;
2. Reimburse Mr. Miller's state campaign for funds it transferred to the Committee; and
3. Establish a fund for official state duties Mr. Miller will carry out as lieutenant governor.

If excess funds may be used for these purposes under Georgia law, they may be similarly used under the Act and Commission Regulations provided:

1. Excess funds transferred to future campaigns for federal office are lawful under the Act (11 CFR 110.3(a)(2)(iv)); and
2. Excess funds transferred to either Mr. Miller's state campaign or to any future campaigns are used for campaign purposes. 11 CFR 113.2.

The Committee may not, however, use the excess funds to establish a travel fund to be used by Mr. Miller's wife when she accompanies him on official duties because no specific information suggests her trips would serve an official purpose. The travel fund would therefore constitute a "personal use" of the excess funds, which is prohibited by 2 U.S.C. §439a and 11 CFR 113.2. (Note: As amended in 1979, the Act provides that excess campaign funds may not be converted to personal use, unless the candidate was a member of Congress on January 8, 1980. Mr. Miller was not.)

The Commission expressed no opinion on the application of federal tax laws to the use of excess campaign funds since those laws are not within its jurisdiction. (Date Issued: November 7, 1980; Length: 3 pages)

AO 1980-114: Disposition of Refunds Made to Terminated Campaign Committee

Telephone refunds received by the terminated Calabrese for Congress Committee (the Committee) may be transferred to Mr. Calabrese as partial repayment for loans he had previously made to the Committee. The refunds are not considered "excess campaign funds" – and, therefore, not a prohibited transfer of excess campaign funds for personal use – because Mr. Calabrese originally made a loan to the Committee rather than a gift. The loan was consistently reported as a loan until the Committee decided to terminate. Under these circumstances, the telephone refund does not constitute "excess campaign funds" – i.e., funds "in excess of any amount necessary to defray . . . expenditures."

The Committee must report receipt of the refunds from the Ohio Bell Telephone Company, and their payment to Mr. Calabrese, in an amended termination report pursuant to 2 U.S.C. §434 and 11 CFR 104. (See also AO 1979-5.) (Date Issued: November 7, 1980; Length: 2 pages)

AO 1980-115: Law Firm's Compensation to Partner Campaigning for Congress

To avoid making a contribution to Mr. Pierce O'Donnell's Congressional campaign, his law firm must either:

1. Reduce Mr. O'Donnell's share of partnership profits to reflect actual hours billed to his clients; or
2. Indicate that Mr. O'Donnell's value to the firm throughout the year increased, offsetting the reduction in Mr. O'Donnell's "client billable hours."

In the absence of any indication that Mr. O'Donnell's value to the firm had increased, any compensation to Mr. O'Donnell in excess of the actual hours he worked for the firm would be considered a contribution to his campaign because compensation to partners is based, in part, on the number of hours they bill to clients. The Commission distinguished this situation from that presented in Advisory Opinion 1979-58, where full compensation to a senior partner was not considered to be an in-kind contribution from his firm because, in that firm, compensation was based solely on the partner's proprietary interest in the firm and not on the amount of time spent on firm matters. Commissioner Frank P. Reiche filed a concurring opinion. (Date Issued: October 14, 1980; Length: 7 pages, including concurring opinion)

AO 1980-117: Conversion of State Committee to Principal Campaign Committee of Federal Candidate

The Concerned Citizens for Kleczka (the Committee), Mr. Gerald Kleczka's state campaign committee, may register and report as his principal campaign committee for federal office, even though the treasury of the state committee contains some contributions that are not permissible under the Act. The newly registered federal committee must, however, handle its cash-on-hand (i.e., funds left over from the state committee) in the following way:

1. The Committee must exclude from cash-on-hand any contributions not permissible under the Act. This means the Committee may not keep or use funds donated by a separate segregated fund that received contributions through a reverse checkoff system. 11 CFR 104.12.
2. On its first report, the Committee must disclose the source of all cash-on-hand on the basis of last in, first "on hand." Mr. Kleczka's cash-on-hand may only include those permissible contributions most recently received by the state committee prior to its registration as a federal committee. 11 CFR 104.12. (Date Issued: November 7, 1980; Length: 3 pages)

AO 1980-119: Allocation of Coordinated Party Expenditures for Television Ads

The National Republican Senatorial Committee (the Committee), which was designated as an agent by the Republican National Committee to make coordinated party expenditures for several Senatorial candidates, must attribute the full amount of such expenditures to the spending limits stipulated by 2 U.S.C. §441a(d)(3).

In making the coordinated party expenditures, the Committee planned to purchase television time in certain markets that would result in broadcasting a political ad in several states. The ad would advocate the election of a single Senatorial candidate in one state; none of the content would be directed to a race in another state reached by the broadcast.

In calculating the amount of coordinated party expenditures, the Committee must count the total costs for the advertising, rather than only that portion of the costs corresponding to the proportion of the total viewing audience that lives in the candidate's state. Calculating coordinated party expenditures on the basis of "political effectiveness" is not permissible because:

1. The Act and Regulations do not provide for such a calculation; and
2. Section 106.2(c) of the Commission's regulations does not apply to this case. This regulation applies only to expenditures by Presidential primary candidates. (Date Issued: October 24, 1980; Length: 4 pages)

FEDERAL REGISTER NOTICES

The list below identifies all FEC documents that appeared in the *Federal Register* between October 9, 1980, and October 24, 1980. Copies of these notices are **not** available from the FEC.

Notice	Title	Federal Register Publication Date	Citation
1980-29	Public Records; Indexes to Statements and Reports (Notice of availability)	October 9, 1980	45 FR 67146
1980-30	11 CFR Part 112; Advisory Opinion Requests, Barring of Withdrawals (Notice of proposed rulemaking)	October 24, 1980	45 FR 70474
1980-31	Negative Campaigns; Denial of Rulemaking Petition	October 24, 1980	45 FR 70568

THE LAW IN THE COURTS

DURKIN FOR U.S. SENATE COMMITTEE v. FEC et al.

Plaintiff initially sought a declaratory judgment from the Court that certain individuals associated with a "Defeat Durkin" effort constituted a "political committee" under the Act, which had failed to register and report with the FEC, and that one of the individuals had made excessive contributions to the "Defeat Durkin" effort. Plaintiff also sought a preliminary injunction to enjoin the "Defeat Durkin" effort from: 1) spending any additional funds until it registers with the FEC or 2) spending any funds which consist of contributions in excess of the limits. Finally, plaintiff asked the Court to order the FEC to expedite review of a complaint plaintiff had filed three days earlier, on October 24, against the same individuals and the "Defeat Durkin" effort.

On October 31, 1980, the District Court denied plaintiff's request for declaratory and injunctive relief and dismissed the suit. The Court maintained that it had no jurisdiction over the suit because the Act stipulates the time frame in which the Commission must resolve complaints. The Court said, "The FECA explicitly requires . . . that the party accused of a violation be given 15 days to 'demonstrate, in writing . . . that no action should be taken against such person on the basis of the complaint.' . . . . By the terms of the statute, the Commission cannot act until they [the accused parties] have responded or until 15 days have passed."

(U.S. District Court for the District of New Hampshire, Docket No. C80-503D, October 27, 1980)

FELICE M. GELMAN AND CITIZENS FOR LaROUCHE, INC. v. FEC

On October 27, 1980, the U.S. District Court for the District of Columbia enjoined the FEC from continuing its investigations of volunteers and contributors to Citizens for LaRouche, Inc., the principal campaign committee of Presidential primary candidate Lyndon H. LaRouche, without first notifying the plaintiffs of the factual and legal basis for the investigation, pursuant to 2 U.S.C. §437g(a) and 11 CFR 111.3(b).

In their suit, brought October 1, 1980, plaintiffs claimed that FEC investigations of individual contributors to the LaRouche committee had violated the Act's procedures, which require the Commission to notify a respondent when it has determined the respondent has, or is about to, violate the Act. This notice must provide the factual and legal basis for the Commission's determination. Plaintiffs also contended that the investigations had harmed the LaRouche committee's fundraising efforts by deterring potential contributors who feared their contributions might also be investigated.

continued

The investigations had resulted from the FEC's determination that certain contributions submitted by the LaRouche committee for primary matching funds required verification. On August 8, 1980, the FEC had ordered that depositions be taken of 25 contributors to the LaRouche committee and, in a letter of August 28, 1980, had notified the LaRouche committee of its action. The FEC maintained that, since the LaRouche committee had not itself been a party to the FEC's investigation, the Commission did not have to provide the committee with specific information on the investigation. The FEC also argued that such notice was not required by 26 U.S.C. §9030(b), which authorizes the FEC to conduct investigations it deems are necessary to carry out its responsibilities under the Presidential Primary Matching Payment Account Act.

The Court said that the FEC's decision to investigate contributors to the LaRouche committee was predicated on the Commission's belief that the election law had been violated. The Court therefore held that the Commission must afford the LaRouche committee notice, pursuant to 2 U.S.C. §437g(a)(2).

NEW LITIGATION

George C. Finn et al. v. FEC

Pursuant to 26 U.S.C. §9011(b), plaintiffs sought a declaratory judgment from a three-judge court that Section 9042 of the Presidential Election Campaign Fund Act and Section 441a of the Federal Election Campaign Act are unconstitutional. Plaintiffs further asked the Court for an order protecting their issuance of campaign items promoting the election of Republican candidates in the general election. On October 30, the Court denied plaintiffs' motion for an *ex parte* protective order. The Court stated that it could not enjoin a governmental agency from enforcing a law without a definitive showing that those portions of the law being challenged were unconstitutional. The same day, plaintiffs asked the Supreme Court to issue a protective order.

(U.S. District Court for the District of Columbia, Docket No. 80-2675, October 20, 1980)

COMPLIANCE

FEC PUBLISHES NAMES OF NONFILERS

On October 31, 1980, the Federal Election Commission published three separate listings of nonfilers who had failed to file campaign finance reports required by the Federal Election Campaign Act (the Act). The Commission published the names of 90 committees authorized by 1980 Senate and House candidates which had failed to file their third quarter reports on time. The reports, due October 15, should have covered financial activity from the last report (or from the date of registration, whichever is later) through September 30, 1980. The second list included the names of 25 House and five Senate campaigns that had failed to meet the October 23 deadline for filing their pre-general election reports. This report, due 12 days before the general election, should have included financial activity occurring from October 1 through October 15, 1980. The Commission also published the name of one Presidential campaign which had failed to file its monthly report. The report, due October 20, should have covered financial activity from September 1 through September 30, 1980.

The Act specifies that the Commission publish only the names of committees authorized by candidates (i.e., individuals who have received or expended in excess of $5,000 in seeking nomination or election to federal office).

CHANGE OF ADDRESS

Political Committees

Registered political committees are automatically sent the *Record*. Any change of address by a registered committee must, by law, be made in writing as an amendment to FEC Form 1 (Statement of Organization) and filed with the Clerk of the House, the Secretary of the Senate or the FEC, as appropriate.

Other Subscribers

Record subscribers (who are not political committees), when calling or mailing in a change of address, are asked to provide the following information:

1. Name of person to whom the *Record* is sent.
2. Old address.
3. New address.
4. Subscription number. The subscription number is located in the upper left hand corner of the mailing lable. It consists of three letters and five numbers. Without this number, there is no guarantee that your subscription can be located on the computer.

AUDITS

AUDITS RELEASED TO THE PUBLIC

The Federal Election Campaign Act, as amended (the Act) requires candidates and political committees to file financial disclosure reports with the Commission. The Act also gives the Commission authority to audit campaigns of all Presidential candidates who receive public funds, and the reports of other political committees. Final audit reports are available to the press through the Press Office and to the general public through the Office of Public Records. The following is a chronological listing of audits released between October 3, 1980, and November 14, 1980.

Audit	Date Made Public
1. Edward M. Kennedy, Kennedy for President Committee (Threshold Audit Report of Primary Campaign)	10/3/80
2. George Bush, George Bush for President Committee (Threshold Audit Report of Primary Campaign)	10/6/80
3. State Democratic Party of Connecticut/ Voter Registration Committee	10/6/80
4. Ronald Reagan, Reagan for President (Threshold Audit Report of Primary Campaign)	10/16/80
5. Anthony R. Martin-Trigona, D-IL Illinois Democratic Campaign Committee	11/5/80
6. Democratic Party of New Mexico	11/13/80
7. Michigan Republican State Finance Committee	11/13/80
8. Association for Better Citizenship	11/13/80
9. Philip M. Crane, Crane for President Committee (Post-Primary Audit Report)	11/14/80

REGULATIONS

STATUS OF FEC REGULATIONS

Regulations*	Date Sent to Congress	Federal Register Publication	Date Prescribed** by the Commission
11 CFR 9033.9 Suspension of Primary Matching Fund Payments	4/10/80	4/15/80 (45 FR 25378)	7/3/80
11 CFR Part 4 Public Records and the Freedom of Information Act	Not applicable	5/13/80 (45 FR 31291)	6/12/80
11 CFR Part 5 Access to Public Disclosure Division Documents	Not applicable	5/13/80 (45 FR 31292)	6/12/80
11 CFR, Parts 100 and 110 Contributions to and Expenditures by Delegates to National Nominating Conventions	5/14/80	5/23/80 (45 FR 34865)	8/7/80
11 CFR, Parts 100, 106, 110, 140-146 and 9001-9007 Public Financing of Presidential General Election Campaigns	6/13/80	6/27/80 (45 FR 43371)	9/5/80

*The chart is cumulative, listing all amendments to the FEC Regulations proposed after the April 1980 edition of 11 CFR was published, including any technical amendments.

**The Commission may prescribe its regulations 30 legislative days after it has transmitted them to Congress, provided neither the House nor the Senate disapproves them during this period.

STAFF

ALICE K. HELM APPOINTED DEPUTY GENERAL COUNSEL

Alice K. Helm has been appointed FEC Deputy General Counsel, a new position created within the Commission's Office of General Counsel. Mrs. Helm, who began serving in the position on October 27, was formerly Legal Advisor to the Office of Civil Rights, U.S. Department of Commerce, from 1978 to 1980. She was the Deputy Assistant General Counsel for Administration and Management at that Department between 1970 and 1978. Mrs. Helm was a Supervisory Attorney in the Office of General Counsel at the U.S. Department of H.E.W. from 1968 to 1970 and a trial attorney in the Civil Division of the U.S. Department of Justice from 1954 to 1966. Mrs. Helm received a B.B.A. from City College of New York in 1947 and an LL.B. from Columbia University in 1950. She also attended the Graduate School of Education, American University, Washington, D.C.

EMPLOYMENT OPPORTUNITY

The Commission has an immediate opening for a GS-11 Statistician (Social Science) to assist in development/implementation of system to monitor validity/reliability of information entered into a computer data-base. Candidate must have demonstrated statistical skills, substantive knowledge of American elections/campaign finance and facility in oral communication. Experience with measurement theory, sampling, and techniques of statistical analysis and inference appropriate for complex data universes is required. No travel funds are available for interviews. Send resume, letters of recommendation and description of methodological skills/experience (and Standard Form 171, if available) to: Personnel Office, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. 202/523-4114. Applications will be accepted through January 2, 1981. The Commission is an Equal Opportunity Employer.

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RECORD

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Volume 6

March 1980

SUPPLEMENT

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SUMMARY OF 1979 AMENDMENTS TO THE FEDERAL ELECTION CAMPAIGN ACT

On January 8, 1980, the President signed into law the 1979 Amendments to the Federal Election Campaign Act of 1971, as amended (Public Law 96-187). This special Supplement to the *Record* highlights major changes in the law with particular focus on:

- Changes that apply to all groups;
- New provisions that affect specific groups (candidates, their authorized committees, party political committees and other political committees); and
- Amendments that modify Commission powers.

All citations in the Supplement are to the Federal Election Campaign Act of 1971, as amended (including the 1979 Amendments), as contained in Title 2 of the United States Code. Generally, the Supplement includes only major revisions or modifications to the law. Occasionally, however, to avoid possible confusion, the Supplement also identifies certain provisions of the election law that have been retained in their original form. Those seeking guidance for their own activity should consult the full text of the Act, as amended. An updated version of the election law (including the 1979 Amendments) will be mailed to all registered candidates and committees when it is available. It's availability will be announced in a future issue of the *Record*.

The Commission published for comment proposed Regulations to implement the 1979 Amendments in the *Federal Register* on January 23, 1980. Final proposed Regulations were transmitted to Congress on February 29, 1980, and published in the *Federal Register* on March 7, 1980. The Regulations may be promulgated if, after 15 legislative days, neither House of Congress votes to disapprove them.

Y 3.El 2/3:

I. CHANGES THAT AFFECT ALL COMMITTEES

A. REGISTRATION

The 1979 Amendments:

1. Eliminate requirement that each political committee have a chairman. Retain requirement that each committee have a treasurer and that no contribution or expenditure be made when there is a vacancy. Section 432(a).

2. Reduce the 11 categories of information required on the statement of organization to six. The following five categories have been eliminated: the area, scope and jurisdiction of the committee; the names, addresses and positions of committee officers other than the treasurer; a statement whether the committee is a continuing one; the disposition of residual funds which will be made in the event of dissolution; and a statement of the reports required to be filed by the committee with state or local officers. Section 433(b).

3. Add requirement that the **type** of committee and the **type** of its connected organization or affiliated committee (if any) be included in the Statement of Organization. Section 433(b).

4. Require only authorized committees to list candidates supported. Section 433(b).

B. RECORDKEEPING

The 1979 Amendments:

1. Retain $50 threshold for keeping records of contributions. Section 432(c)(2).

2. Reduce recordkeeping requirements by increasing from $100 to $200 per calendar year the threshold requirement for keeping **detailed records** (i.e., occupation and name of employer) on aggregate contributions from the same person. Section 432(c)(3).

3. Retain requirement for keeping records of all disbursements. Section 432(c)(5).

4. Modify requirements for **documentation** and **detailed recordkeeping** of disbursements so that the requirements apply only to those disbursements exceeding $200 (formerly $100) and **not** to aggregate expenditures (as formerly required). Reduce required documentation for such disbursements to a receipt, invoice or canceled check. Section 432(c)(5).

5. Modify the definition of "identification." For recordkeeping and reporting purposes, "identification" for an individual must include the individual's name, mailing address, occupation and the name of his/her employer. For any other person, identification must include the person's full name and address. Section 431(13).

6. Add provision that the committee will be considered to be in compliance with the Act if the treasurer is able to demonstrate that "best efforts" have been made to obtain, maintain and submit the information required by the Act. Section 432(i).

C. POLITICAL ADVERTISING/SOLICITATION NOTICES

The 1979 Amendments:

1. Repeal requirement for the following notice, formerly required on all campaign solicitations by a political committee:

   A copy of our report is filed with the Federal Election Commission, and is available for purchase from the Federal Election Commission, Washington, D.C.

2. Extend the requirement for an authorization notice, previously required only for candidate advocacy statements, to solicitation statements as well. Thus, under the new amendments, a **communication that expressly advocates the election or defeat of a clearly identified candidate or solicits contributions through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing or any other type of general public political advertising, must include an authorization notice**, as indicated below:

   a. If the communication is paid for and authorized by a candidate or his/her authorized political committee or its agents, it must state that **the communication has been paid for by the authorized political committee.**

   b. If the communication is authorized by the candidate or his/her authorized political committee or its agents, but paid for by another person, it must state that **the communication has been authorized by the committee, and paid for by a specific person.**

   c. If the communication is not authorized by the candidate or his/her authorized political committee or its agents, it must clearly state that

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the communication has not been authorized by the candidate or his/her committee and must clearly state the name of the person who paid for the communication.

D. BANK LOANS

The Amendments extend the contribution exemption for bank loans to include loans made by federally chartered depository institutions or depository institutions which are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the National Credit Union Administration – in addition to the currently exempted loans from state and national banks. Section 431(B)(vii).

E. REPORTING

1. Contents

The Amendments redefine and reorder reporting categories under which receipts and disbursements must be reported. (New forms will reflect these changes.) Section 434(b).

2. Itemization

The Amendments reduce reporting requirements by raising from $100 to $200 the threshold for itemizing receipts and disbursements.

3. 48-Hour Reports

The Amendments modify the requirement for 48-hour reports and limit it to principal campaign committees, which are responsible for reporting last-minute contributions received by all authorized committees. Formerly, contributions of $1,000 or more which were received after the 15th day but more than 48 hours before an election had to be reported by the recipient committee within 48 hours of their receipt. The Amendments extend the 48-hour reporting period to cover contributions received after the 20th day but more than 48 hours before the election. Section 434(a)(6)(A).

F. TERMINATION

The Amendments eliminate the financial activity threshold ($1,000 or less) for termination. Instead, a committee may terminate only when it has provided the Commission with written notification that it will no longer receive **any** contributions or make **any** disbursements. Amendments retain, however, former requirement that the committee have no outstanding debts or obligations. Section 433(d).

II. CHANGES THAT AFFECT CANDIDATES AND THEIR AUTHORIZED COMMITTEES

A. DEFINITION OF CANDIDATE

The Amendments establish a $5,000 threshold which, alone, triggers candidate status. An individual becomes a candidate only after he/she receives contributions or makes expenditures in excess of $5,000. This eliminates the former provision that an individual became a candidate either when he/she made **any** expenditures or received **any** contributions, or when the individual took appropriate action under state law to qualify for election to federal office. Section 431(2).

B. CANDIDATE'S RESPONSIBILITIES

The 1979 Amendments:

1. Eliminate candidate's reporting responsibilities; instead the candidate's principal campaign committee reports all financial activities of the campaign. Section 434(a)(1).

2. Add provision that candidates may accept contributions or make expenditures only as agents of their authorized committees. Section 432(e)(2).

3. Modify requirement for designation of campaign depository(ies) so that only the committee – not the candidate – may make the designation. In addition to national or state banks, the Amendments add the following financial institutions to the list of permissible depositories: federally chartered depository institutions or depository institutions insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation or the National Credit Union Administration. Section 432(h)(1).

C. DESIGNATIONS BY CANDIDATE

1. Principal Campaign Committee

The 1979 Amendments:

a. Require that each candidate (except nominated Vice Presidential candidates) designate a principal campaign committee in writing within 15 days after the individual becomes a candidate. Formerly, Commission Regulations provided 30 days for designation of principal campaign committees. (The principal campaign committee need not register until candidate status is triggered, i.e., the $5,000 threshold is exceeded.) Section 432(e)(1).

b. Add requirement that candidate's name be included in the name of any authorized committees, including the principal campaign committee. Section 432(a)(4).

2. Authorized Committees

The 1979 Amendments:

a. Add provision that candidate must file written designations of any additional authorized committees with principal campaign committee. The principal campaign committee must file all designations with the appropriate supervisory authority. Section 432(e)(1)(f).

b. Modify registration requirements so that authorized committees must file statements of organization with the principal campaign committee (rather than with the FEC, Senate or House) within 10 days of their designation by the candidate. Section 433(a).

c. Add requirement that candidate's name be included in the name of any authorized committee. Section 432(e)(4).

d. Add provision that no committee which **supports** more than one candidate may be designated as an authorized committee. Amendments define "support," making clear the term does not include a contribution of $1,000 or less to another candidate's authorized committee. Add provision that candidates may, nevertheless, designate committees established solely for joint fundraising purposes as authorized committee. Retain the provision that Presidential candidates may designate the national committee as the principal campaign committee. Section 432 (e)(3).

D. CONTRIBUTIONS

1. Definition

The 1979 Amendments repeal from the definition of contribution "written contract, promise or agreement, whether or not legally enforceable, to make a contribution . . ." Section 431(8)(a).

2. Excess Campaign Funds

The 1979 Amendments modify provision on use of excess campaign funds. Candidates who were not U.S. House or Senate Members on January 8, 1980, may not convert surplus funds to personal use. Add provision permitting candidates and their authorized committees to transfer unlimited excess campaign funds to party political committees. Section 439a.

3. Contribution Exemptions

a. Volunteer Activity by Individuals Expanded

The 1979 Amendments **expand** contribution exemptions (i.e., payments exempted from the definition of contribution) for certain volunteer activities on behalf of candidates by:

i. Establishing a $1,000 limit (per candidate, per election) for certain types of volunteer activity that individuals may conduct on behalf of candidates. Formerly, the Act placed a $500 limit on such activities. Any payments exceeding the $1,000 limit are not exempt. Sections 431(8)(B)(ii), (iii) and (iv).

ii. Extending the exemption to permit the volunteer to conduct candidate-related activities in a church or community room that is used on a regular basis by members of a community for noncommercial purposes. Formerly, individuals were limited to the use of their residential premises for such purposes. Section 431(8)(B)(ii).

b. Campaign Materials Produced by Candidate

The 1979 Amendments add a provision permitting any candidate (federal, state or local) or his/her authorized committee to make payments for campaign materials (e.g., pins, bumper stickers, handbills, brochures, etc.) which include information on or reference to other candidates and which are used in connection with volunteer activities. The payments must be made from funds that are permissible under the Act and may not be made for general public communication or public political advertising. Section 431(8)(B)(xi).

E. REPORTING

1. Who Reports

The 1979 Amendments eliminate requirement that candidates file reports; instead, Amendments require that all reports be filed by the treasurer of the candidate's principal campaign committee. Section 434(a)(2)(A).

2. Number of Reports

The Amendments reduce the number of required reports from a maximum of 24 reports, per election cycle, to a maximum of 9. See below.

3. When Congressional Campaigns File

a. During an Election Year

The 1979 Amendments:

i. Eliminate contribution and expenditure thresholds for **quarterly** reports. Quarterly reports must be filed regardless of amounts received or expended. Quarterly reports must be filed by the 15th day after the close of each calendar quarter (rather than by the 10th day as formerly required) except the 4th quarter report (year-end report) which must be filed by January 31 of the following year. Section 434(a)(2)(iii).

ii. Eliminate requirement for post-primary election report.

iii. Retain requirement for pre-primary and pre-general election reports. Those reports are due on the 12th day before the election (rather than on the 10th day as formerly required). If sent by registered or certified mail, they must be postmarked no later than the 15th day before an election

(rather than the 12th day as formerly required). The reports must be complete as of the 20th day before the election (rather than the 15th day as formerly required). Section 434(a)(2)(A)(i).

iv. Retain requirement for a post-general election report, filed by the 30th day after any general election and complete as of the 20th day after the election. Section 434(a)(2)(A)(ii).

v. Waive the requirement for a quarterly report if a pre-election report is due within the period beginning on the 5th day and ending on the 15th day after the close of a calendar quarter. Section 434(a)(8).

b. During a Nonelection Year

The 1979 Amendments eliminate requirement for **quarterly** reports in a nonelection year. Instead, amendments require two **semiannual** reports. The first report, covering January through June, must be filed by July 31; the second report, covering July through December, must be filed by January 31 of the following year. Sections 434(a)(2)(B)(i) and (ii).

4. When Presidential Campaigns File

a. During a Presidential Election Year

The 1979 Amendments establish rules for filing either quarterly or monthly reports:

i. Presidential campaign committees which have received or spent $100,000, or which anticipate receiving or spending that amount, **must file monthly reports** for the first nine months, plus pre- and post-general election reports and a year-end report. If, at any time during the year, a Presidential campaign committee reaches the $100,000 threshold, it must file a monthly report for the next reporting period after the threshold has been reached. Sections 434(a)(3)(A)(i) and (iii).

ii. Other Presidential principal campaign committees (which do not exceed the $100,000 threshold) **must file quarterly reports** and pre-election and post-general election reports. Section 434(a)(3)(A)(ii).

b. During a Nonelection Year

The 1979 Amendments retain option for Presidential committees to file either **monthly** or **quarterly** reports. Quarterly reports must be filed by the 15th day after the close of the calendar quarter rather than on the 10th day as formerly required. Sections 434(a)(3)(B)(i) and (ii).

5. Special Elections

The 1979 Amendments add provision that requires the Commission, within five days after a state sets the date for a special election, to establish filing dates for reports required of candidate committees involved in that special election and committees that support them. The Commission is also required to notify these principal campaign committees of the filing dates. Section 434(a)(9).

III. CHANGES THAT AFFECT PARTY POLITICAL COMMITTEES

A. REGISTRATION

1. Which Committees Must Register?

The 1979 Amendments relax registration requirements for party organizations by modifying definition of "political committees." Local party committees are not considered political committees and will not incur registration and reporting obligations unless they:

- receive contributions aggregating more than $5,000 a year;
- spend more than $5,000 a year for payments that are exempted from the definition of contribution or expenditure (see below);
- make aggregate contributions exceeding $1,000 a year; or
- make aggregate expenditures exceeding $1,000 a year. Section 431(4)(C).

2. When Must They Register?

The Amendments require party political committees to file a Statement of Organization within ten days after becoming a political committee within the meaning of the Act. Section 433(a).

B. CONTRIBUTION EXEMPTIONS

1. Volunteer Activity by Individuals on Behalf of Party Committees

The Amendments extend to party political committees several contribution exemptions (i.e., payments exempted from the definition of contribution) formerly granted to candidate-related activities.

a. Real or Personal Property Used by Volunteers

The Amendments permit individuals to use real or personal property, including the cost of invitations, food and beverages, for party-related activities conducted at an individual's residence or a church or community room. The Amendments establish a $2,000 annual limit, per individual, on behalf of all political committees of a political party. Section 431(8)(B)(ii).

b. Vendor Discounts

The Amendments permit vendors to sell discounted food and beverages to party committees provided that the charge to the committee at least equals the vendor's cost. The Amendments establish a $2,000 annual limit, per vendor, on behalf of all political committees of a political party. Section 431(8)(B)(iii).

c. Travel Expenses of Volunteers

The 1979 Amendments permit volunteers to pay their own travel expenses made on behalf of a party political committee. The Amendments establish a $2,000 annual limit, per individual, for travel on behalf of all political committees of a political party. Section 431(8)(B)(iv).

2. Campaign Materials

The 1979 Amendments permit state and local party committees to make payments (exempted from contributions) for certain campaign materials (e.g., bumper stickers, pins) used by such committees in connection with volunteer activities on behalf of party candidates. The funds used for the payments must be:

- made from contributions permissible under the Act;
- not designated for a particular candidate; and
- not used for broadcasting, newspapers, magazines, billboards, direct mail or other similar types of general public political advertising. Section 431(8)(B)(x).

3. Voter Registration and Get-Out-the-Vote

The 1979 Amendments add exemption for payments for voter registration and get-out-the-vote activities conducted by state or local party committees on behalf of Presidential candidates, provided that the funds used for these activities are:

- made from contributions permissible under the Act;
- not designated for a particular candidate; and
- not used for broadcasting, newspapers, magazines, billboards, direct mail or other similar types of general public political advertising. Section 431(8)(B)(xii).

4. Legal and Accounting Services

The 1979 Amendments extend to all party political committees the provision permitting them to accept legal or accounting services, provided the services are paid for by the accountant's or lawyer's regular employer and are not attributable to activities which directly further the election of any candidate to federal office. The Amendments retain requirement that the amount paid or incurred by the regular employer, although not considered a contribution, must be reported by the committee receiving the services. Section 431(8)(B)(ix)(I).

5. Ballot Access

The 1979 Amendments add exemption for payments received by party political committees from candidates as a condition of ballot access. Section 431(8)(B)(xiii).

6. Slate Card

The Amendments retain the slate card exemption. Section 431(8)(B)(v).

7. Excess Campaign Funds

The Amendments permit candidates and their authorized committees to transfer unlimited excess campaign funds to party political committees. Section 439a.

C. REPORTING

The Amendments reduce the number of reports required by party political committees.

1. During an Election Year

The 1979 Amendments:

a. Eliminate contribution and expenditure thresholds for quarterly reports. Quarterly reports must be filed regardless of amounts received or spent. Quarterly reports must be filed by the 15th day after the close of each calendar quarter (rather than by the 10th day as formerly required) except the 4th quarter report (year-end report), which must be filed by January 31 of the following calendar year. Section 434(a)(4)(A)(i).

b. Add option to file monthly rather than quarterly reports. Section 434(a)(4)(B).

c. Retain requirement for pre-primary and pre-general election reports. Those reports are due on the 12th day before an election (rather than on the 10th day as formerly required). If sent by registered or certified mail, they must be postmarked no later than the 15th day before an election (rather than the 12th day as formerly required). The reports must be complete as of the 20th day before an election (rather than the 15th day as formerly required). Section 434(a)(4)(A)(ii).

d. Eliminate the requirement for a post-primary election report.

e. Retain requirement for a post-general election report, filed by the 30th day after the general election and complete as of the 20th day after the election. Section 434(a)(4)(A)(iii).

2. During a Nonelection Year

The 1979 Amendments:

a. Eliminate requirement for quarterly reports.

b. Establish two options for reporting:

i. Semiannual reports. The first report, covering the period from January through June, must be filed by July 31. The second report, covering the period from July through December, must be filed by January 31 of the following year. Section 434(a)(4)(A)(iv); or

ii. Monthly reports. Section 434(a)(4)(B).

D. PUBLIC FINANCING

The Amendments increase from $2,000,000 to $3,000,000 the amount of public funds available to the national committees of major political parties for their nominating conventions. Section 9008(b)(1).

IV. CHANGES THAT AFFECT NONPARTY, NONCANDIDATE COMMITTEES

A. DEFINITIONS

1. Separate Segregated Fund

The 1979 Amendments:

a. Expand definition of political committee to include "any separate segregated fund established under . . . [the Act]," regardless of the amount of financial activity. Section 431(4)(B).

b. Add requirement that each separate segregated fund include the name of its connected organization in the committee's name. Section 432(e)(5).

c. Add requirement that a separate segregated fund must register within ten days of its "establishment." Section 433(a).

2. Connected Organization

The 1979 Amendments add definition of connected organization as one "which is not a political committee but which directly or indirectly establishes, administers or financially supports a political committee." Section 431(7).

3. Unauthorized Committee

The 1979 Amendments:

a. Retain $1,000 per calendar year campaign activity threshold for qualifying as a political committee. Section 431(4)(A).

b. Add provision that prohibits an unauthorized political committee from including the name of any candidate in its name. Section 432(e)(4).

B. REPORTING

1. When Reports Are Filed

Same as for party committees (above).

2. Reports Filed With State Officers

The 1979 Amendments add a provision permitting political committees (other than authorized committees) to file only that portion of the report applicable to candidates seeking election in the particular state. Section 439(a)(2)(B).

V. INDEPENDENT EXPENDITURES

The 1979 Amendments:

A. Reduce reporting requirements for independent expenditures by persons other than political committees by:

1. Raising the reporting threshold from $100 to $250; and

2. Raising from $100 to $200 the threshold for reporting the identity of any person who makes a contribution toward the independent expenditure. Section 434(c).

B. Modify requirement for 24-hour pre-election report of independent expenditures aggregating $1,000 or more which are made shortly before an election. Formerly, such reports were required when independent expenditures were made after the 15th day but more than 24 hours before the election. The Amendments extend that period to cover such independent expenditures made after the 20th day but more than 24 hours before the election. Section 434(c)(2).

VI. CHANGES THAT AFFECT COMMISSION POWERS

A. ADVISORY OPINIONS

The 1979 Amendments extend the right to request an advisory opinion to any person affected by the Act as long as the request relates to a specific transaction or activity which that person intends to undertake. Section 437f.

B. REGULATIONS

The 1979 Amendments:

1. Add new provision which states that any person who relies on any Commission rule or regulation and acts in good faith in accordance with the rule or regulation shall not be subject to any sanction provided by the Act or Chapters 95 and 96 of Title 26 of the United States Code. Section 438(e).

2. Add provision for expediting regulations that implement the 1979 Amendments.

C. ENFORCEMENT

1. Complaint

The Amendments retain provision that any person may file a written, signed and notarized complaint, but add that such complaints are made under penalty of perjury. Also add requirement that the Commission notify the respondent within five days after the complaint is received. Before the Commission can take any action on a complaint, other than a vote to dismiss, the person named in the complaint has 15 days after the notification in which to demonstrate, in writing, why no action should be taken against him/her. Section 437g(a)(1).

2. Reasonable Cause to Believe

The Amendments eliminate "reasonable cause to believe" stage in enforcement process. The Commission will proceed from "reason to believe" to "probable cause to believe."

3. Probable Cause to Believe and Respondent's Right to Reply

The Amendments add provision stipulating that respondent be notified of a recommendation by the General Counsel that the Commission proceed to a vote on "probable cause to believe" the Act has been violated. The notification must include a brief, setting forth the General Counsel's position on the legal and factual issues. Within 15 days, the respondent may submit a reply to the General Counsel's brief, which, if submitted, must be considered by the Commission before it makes a determination. Section 437g(a)(3).

4. Conciliation Agreement

The Amendments modify conciliation provision so that the Commission attempts conciliation only if, by an affirmative vote of four Commissioners, it finds "probable cause to believe," rather than "reasonable cause to believe," as formerly required. Section 437g(a)(4)(A)(i).

5. Confidentiality

The Amendments require (prior to the final closing of an enforcement case) the written consent of the respondent and the Commission before the Commission may make public any action or information derived in connection with a conciliation attempt. Formerly, the respondent's written consent was required to make any notification or investigation public prior to the closing of a case. The Amendments retain, however, the requirement that the Commission place a conciliation agreement on the public record, once it has been finalized. Section 437g(a)(4)(B)(i).

6. Commission Action

The Amendments extend from 90 to 120 days the period within which the Commission must act on a complaint filed by an individual. If the Commission does not act on a complaint within 120 days, the complainant may file with the District Court. Section 437g(a)(8)(A).

D. CLEARINGHOUSE

The 1979 Amendments:

1. Modify provision for the Commission to act as a national clearinghouse "for the compilation of information and review of procedures with respect to the administration of federal elections." Section 438(a)(10).

2. Add provision which requires the Commission, in cooperation with the National Bureau of Standards, to conduct a preliminary study on the future development of voluntary engineering and procedural performance standards for voting systems used in the United States. The Commission must report the results of the study to Congress and include recommendations for the implementation of a program of such standards.

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FOR STATE AND LOCAL PARTY ORGANIZATIONS

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INTRODUCTION

This Supplement provides general information to help state and local party organizations comply with the Federal Election Campaign Act (the Act) and Commission Regulations. It reflects recent amendments to the Act that directly affect party political committees and other party organizations. The Supplement is intended as a guide only; the material is not comprehensive. For further information, a party organization should consult the Act and the Regulations or call the FEC's Office of Public Communications. (See "Assistance from the FEC," Part X.) Citations in the Supplement are to the Regulations (11 CFR Parts 100-115).

I. UNDERSTANDING CONTRIBUTIONS AND EXPENDITURES

Under the Federal Election Campaign Act, understanding the terms "contributions" and "expenditures" is essential to understanding the basic requirements of the Act.

— The amount of "contributions" received and the amount of "expenditures" made may determine whether a group must **register as a political committee** under the Act.

— In addition, "contributions" may not exceed the prescribed dollar limits or violate the prohibitions of the Act.

— Finally, "contributions" received and "expenditures" made must be reported by party political committees separately from other receipts and disbursements.

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A. WHAT IS A CONTRIBUTION?

A contribution is anything of value (money, goods and services) given to, or provided on behalf of, a candidate or political committee to influence federal elections. 100.7(a)(1). Committees both **receive** and **make** contributions.

B. WHAT IS AN EXPENDITURE?

An expenditure is a purchase or payment made to influence federal elections. 100.8(a)(1). Note, however, that a contribution **made** by a committee is reported as an expenditure by the donor committee and as a contribution by the recipient committee.

C. CONTRIBUTION LIMITS

Under the Act, individuals and groups are limited in the amounts they may contribute to candidates for federal office and to political committees that support them. 110.1, 110.2 and 110.3. (See the Chart on Contribution Limits in the Appendix.)

D. PROHIBITED CONTRIBUTIONS

The Act prohibits certain kinds of contributions made or received for the purpose of influencing, or used in connection with, federal elections. The following contributions **ARE PROHIBITED:**

- Contributions from corporations,* labor organizations and national banks.* 114.2.
- Contributions from federal government contractors. 115.2.
- Contributions from foreign nationals.* 110.4(a)
- Contributions of cash (currency) exceeding $100 in the aggregate, per campaign. 110.4(c).
- Contributions in the name of another. 110.4(b).

II. COORDINATED PARTY EXPENDITURES

A. STATE PARTY COMMITTEES

State party committees may make special **limited** expenditures, referred to as coordinated party expenditures, on behalf of their party's nominees for the U.S. House and Senate. (These expenditures are also sometimes called "441a(d) expenditures" because they are provided for in §441a(d) of the Act.) Coordinated party expenditures may be made only for a general election campaign, not for a primary election. They may be made in cooperation with a candidate but are not considered contributions and do not count against the committee's contribution limit for a candidate. The party committee — not the candidate — must actually make the expenditures and is responsible for reporting them. For example, a party committee could extinguish a candidate's $1,500 advertising bill by paying the advertiser directly. If, however, the party committee directly gave the candidate $1,500 to pay the bill, the money would be a contribution, **not** a party expenditure.

The state party committee may designate local party committees to make coordinated party expenditures, but the state committee is responsible for insuring that the expenditures of the local party committees do not exceed the entire state limit. 110.7(b) and (c).

State and local party committees may not make independent expenditures in a general election campaign. 110.7(b)(4).

B. NATIONAL PARTY COMMITTEE

The national party committee may also make coordinated party expenditures in the general election campaigns for House and Senate candidates. A separate spending ceiling applies to the national party. 110.7(b). With regard to the Presidential general election, only the national committee may make coordinated party expenditures on behalf of the party's nominee, although state and local party committees may be designated as agents for making Presidential coordinated party expenditures. 110.7(a).

C. COORDINATED PARTY EXPENDITURE LIMITS — 1980

1. Presidential Candidates

The national party committee's expenditure limit for Presidential candidates for the 1980 general election is $4,637,653.76. This figure is based on the following formula: U.S. voting age population x $.02, plus a 47.2 percent increase in the Consumer Price Index. (The actual figure has been derived by making the following calculation: 157,529,000 x $.02 x 1.472.)

2. Senate Candidates

The party's expenditure limit* for Senate candidates is the greater of either:

- State voting age population (VAP) x $.02, plus a 47.2 percent increase in the Consumer Price Index (VAP x $.02 x 1.472); or
- $29,440. (See chart below.)

*National banks, Congressionally authorized corporations and foreign nationals may not make contributions in connection with any election — local, state or federal. 110.4(a)(1) and 114.2(a).

1980 COORDINATED PARTY EXPENDITURE LIMITS FOR SENATE CANDIDATES

State	VAP (in thousands)	1980 Party Spending Limitations
Alabama	2,644	$77,839.36
Alaska*	261	29,440.00
Arizona	1,697	49,959.68
Arkansas	1,542	45,396.48
California	16,475	485,024.00
Colorado	1,972	58,055.68
Connecticut	2,295	67,564.80
Delaware*	417	29,440.00
Florida	6,633	195,275.52
Georgia	3,561	104,835.84
Hawaii	640	29,440.00
Idaho	612	29,440.00
Illinois	7,997	235,431.68
Indiana	3,807	112,078.08
Iowa	2,080	61,235.20
Kansas	1,724	50,754.56
Kentucky	2,485	73,158.40
Louisiana	2,723	80,165.12
Maine	779	29,440.00
Maryland	3,000	88,320.00
Massachusetts	4,253	125,208.32
Michigan	6,470	190,476.80
Minnesota	2,892	85,140.48
Mississippi	1,624	47,810.56
Missouri	3,524	103,746.56
Montana	551	29,440.00
Nebraska	1,125	33,120.00
Nevada*	495	29,440.00
New Hampshire	634	29,440.00
New Jersey	5,332	156,974.08
New Mexico	836	29,440.00
New York	12,898	379,717.12
North Carolina	3,992	117,524.48
North Dakota*	462	29,440.00
Ohio	7,645	225,068.80
Oklahoma	2,076	61,117.44
Oregon	1,828	53,816.32
Pennsylvania	8,620	253,772.80
Rhode Island	683	29,440.00
South Carolina	2,026	59,645.44
South Dakota	484	29,440.00
Tennessee	3,134	92,264.96
Texas	9,291	273,527.04
Utah	862	29,440.00
Vermont*	350	29,440.00
Virginia	3,758	110,635.52
Washington	2,829	83,285.76
West Virginia	1,339	39,420.16
Wisconsin	3,372	99,271.68
Wyoming*	312	29,440.00
District of Columbia		14,720.00
Guam		14,720.00
Puerto Rico		14,720.00
Virgin Islands		14,720.00

*States in which there is only one Congressional district. In these states, the Senate limit also applies to the coordinated party expenditure limit for House candidates. For all other states, the limit for House candidates is $14,720.

3. House Candidates

The limit* for House candidates is either:

— $14,720 for House candidates in states with more than one district (and candidates for Delegate from the District of Columbia, Guam and the Virgin Islands; or for Resident Commissioner from Puerto Rico); or

— The same as the Senate limit for the state, for House candidates in states with only one Congressional district. (See states marked with asterisk on chart.)

III. REGISTRATION REQUIREMENTS

Party organizations are required to register as political committees when their federal campaign activity reaches a financial threshold stipulated by the Act. A committee registers by filing a Statement of Organization (FEC Form 1) within 10 days after qualifying as a political committee. After registering, a committee must submit periodic reports on its financial activity. 102.1(d) and 104.1(a).

A. STATE PARTY COMMITTEES

A state party committee must register when it either receives contributions or makes expenditures aggregating over $1,000 during a calendar year. 100.5(a).

B. LOCAL PARTY COMMITTEES

1. Thresholds Triggering Registration

A local party committee must register when:

a. It **receives** contributions aggregating over $5,000 during a calendar year; or

b. It **makes** contributions **or** expenditures aggregating over $1,000 during a calendar year; or

c. It makes payments, aggregating over $5,000 during a calendar year, for certain campaign activities that are exempted from the definition of contribution or expenditure. 100.5(c). These activities are described under "Exempted Activities," Part IV.

2. Transfers May Trigger Registration

Transfers of funds may be made without limit among national, state and local party organizations, whether or not they are registered as political committees under the Act. Transfers apply, however, toward the thresholds for determining if an organization is required to register as a political committee. 102.6(a). Thus, if a local party organization transfers funds exceeding $1,000 in the aggregate to a

*The national and state party committees may each spend up to this amount.

party political committee (i.e., registered under the Act) that, in turn, deposits the funds in an account used for federal elections, the local organization will be required to register as a political committee within 10 days of making the transfer. Also, a local party organization must register as a political committee if the combined total of its transfers and contributions to influence federal elections exceeds $1,000 per year.

A party organization may avoid having to register if the political committee receiving the transfer follows the procedures described below.

a. Funds Not Intended for Federal Elections
The recipient committee deposits the transferred funds in a separate account that is used only for nonfederal elections.

b. Funds Intended for Federal Elections
If a local party organization acts as a collection agent for a party political committee, the recipient committee reports the transferred funds as contributions from the original donors who actually contributed the funds to the local organization. The contributions, along with certain required recordkeeping information, must be forwarded to the recipient committee's treasurer within a specified period of time. 102.6(b). (See "Keeping Records," Part IX.) In this case, contributors must be informed that their contributions are subject to the prohibitions and limitations of the Act because the contributions will be passed on to the registered political committee to be used in connection with federal elections. 102.5(a)(2).

IV. EXEMPTED ACTIVITIES

Party committees may engage in certain activities that benefit federal candidates, but which are exempt from the definition of contribution or expenditure. This means that the payments do not count against the committee's or group's contribution limit or coordinated party expenditure limit for a candidate. When, however, a local party organization spends more than $5,000 a year for these exempted activities, it is required to register as a political committee under the Act.

Party political committees must report payments for these activities as disbursements. Unregistered party organizatons, i.e., those that have not registered as political committees, have no reporting obligations.

A. SLATE CARD/SAMPLE BALLOT

A state or local party committee may prepare and distribute a slate card, sample ballot, palm card or other printed listing of three or more candidates for any public office. Payments are exempt as long as they are not made for general public political advertising and provided that the portion allocable to federal elections is not paid from funds prohibited by the Act. 100.7(b)(9) and 100.8(b)(10).

B. CAMPAIGN MATERIALS

A state or local party committee may pay for certain campaign materials (e.g., pins, bumper stickers, handbills, brochures) that are distributed by volunteers in connection with activity on behalf of the party's nominees in a general election. Payments qualify as exempted contributions/expenditures only if:

1. They are **not** made for general public political advertising (e.g., radio, television, newspapers, magazines, billboards, commercial mailings);

2. They are **not** made from funds designated for a particular candidate;

3. They are **not** made from funds donated by the national party committee specifically for the purpose of conducting such activity; and

4. The portion allocable to federal elections is **not** paid from funds which are prohibited by the Act. 100.7(b)(15) and 100.8(b)(16).

C. VOTER REGISTRATION OR GET-OUT-THE-VOTE DRIVE

A state or local party committee may conduct a voter drive on behalf of its party's Presidential nominee; payments for the drive are exempt only if they fulfill the four conditions listed under "Campaign Materials." Expenses for phone banks used in conducting the drive are also exempt provided the phones are operated by volunteer workers. If the drive mentions a candidate for the House or Senate, the reference must be merely incidental to the overall activity. Otherwise, the cost that is allocable to the House or Senate candidate is a contribution or coordinated party expenditure on behalf of that candidate. 100.7(b)(17) and 100.8(b)(18).

V. SEGREGATION OF FEDERAL/NONFEDERAL FUNDS

Because the Act's prohibitions and limitations on contributions may be stricter than state laws, state and local party organizations engaged in both federal and nonfederal election activities must be organized so that prohibited contribu-

tions are not used in connection with federal elections. Procedures for segregating funds are described below.

A. UNREGISTERED PARTY ORGANIZATIONS

A state or local party organization that makes contributions, expenditures or payments for the exempted activities described above (but which has not qualified as a political committee under the Act) may either:

1. Establish a separate account into which only contributions permitted by the Act are deposited; or

2. Demonstrate through a reasonable accounting method that, when making contributions, expenditures or exempted payments, the organization has received contributions permitted by the Act in an amount sufficient to cover all such contributions, expenditures and exempted payments. 102.5(b).

B. REGISTERED PARTY COMMITTEES

A state or local party organization that is a political committee under the Act may register in one of two ways:

1. The organization may establish a separate bank account that is treated as a separate federal political committee and, therefore, is subject to the Act's registration and reporting requirements. All federal election financial activity must be transacted from the account, and **only contributions permitted by the Act may be deposited in it.** 102.5(a)(1)(i).

   On the other hand, the organization's separate account for state and local election activity is not subject to the Act's reporting requirements, although some state laws require nonfederal-account activity to be reported to state officers.

2. Alternatively, the party organization may register and report as a political committee under the Act. Because, under this procedure, the organization has only a single bank account to be used for both federal and nonfederal elections, **it may receive only contributions permitted by the Act,** regardless of whether the contributions are used for federal or nonfederal elections. 102.5(a)(1)(ii).

VI. ALLOCATION OF ADMINISTRATIVE EXPENSES

Commission Regulations require that "party committees and other political committees [supporting both federal and nonfederal candidates] which have established federal campaign committees pursuant to 11 CFR 102.5 [of the FEC Regulations] shall allocate administrative expenses on a reasonable basis between their federal and nonfederal accounts . . . ." 106.1(e). These administrative expenses include rent, personnel, overhead, and other day-to-day costs of the party committee. The portion of the administrative expenses allocable to the federal committee counts against the committee's limits for a given candidate if the expenses are made on behalf of and can be directly attributed to a clearly identified candidate. 106.1(c)(1). The expenses allocable to the federal committee must be paid from funds lawfully contributed under the Act. 102.5(a)(2). The nonfederal expenses may be paid from a nonfederal account which may include, if permissible under state law, funds from corporate or labor sources.

The following methods of allocating party expenses between federal and nonfederal accounts have been suggested by the Commission in the Regulations and several Advisory Opinions.

A. PROPORTIONATE TO FUNDS SPENT

Expenses may be allocated in proportion to the amount of funds spent on federal elections compared with the amount spent on nonfederal elections. 106.1(e).

B. PROPORTINATE TO FUNDS RAISED

Expenses may be allocated in proportion to the total amount of funds received respectively by the federal committee alone and the federal and nonfederal committees together. The ratio should be based on cumulative figures, from the beginning of the year, and should not include refunds or loan repayments. Consider, for example, a state-wide political party organization which has received a total of $10,000 for both its federal and nonfederal committees, and whose receipts for the federal committee alone amount to $1,500. In this case, the administrative expenses which must be paid by the federal committee would be 15 percent of the total administrative expenses of the state party organization. AOR 1976-72, AO 1978-28 and AO 1978-50.

C. BALLOT POSITION

Expenses may be allocated in proportion to the number of federal and nonfederal candidates appearing on the official election ballot. Candidates for federal office should be given proportionately more weight. AOR 1976-72, AO 1978-28 and AO 1978-50.

D. ANY OTHER REASONABLE BASIS

Expenses may be allocated between the federal and nonfederal committees on any other reasonable basis. 106.1(e).

VII. VOLUNTEER ACTIVITY

Subject to the **limitations** listed below, individuals may volunteer their services and goods on behalf of a party committee without such activity

counting as a contribution. Volunteer activity is not reportable. In cases, however, where the volunteer activity is subject to a monetary limit, the value of the activity that exceeds the limit is considered a contribution to the party committee. The value exceeding the limit counts against the volunteer's contribution limit and must be reported by a party political committee as an in-kind contribution.

A. PERSONAL SERVICES

An individual may volunteer any personal service provided he/she is not compensated for the service by any other committee, individual or organization. 100.7(b)(3).

B. ACTIVITIES IN THE HOME

An individual may offer the use of his/her home or the recreation room of his/her residential complex for party-related activities, provided the room is available without regard to political affiliation. Any nominal fee charged for the room is not considered a contribution. 100.7(b)(4).

C. ACTIVITIES IN CHURCH OR COMMUNITY ROOM

An individual volunteer may obtain the use of a church or community room for party-related activities, provided the room is used on a regular basis by members of the community, without regard to political affiliation, for non-commercial purposes. Any nominal fee paid for the room is not considered a contribution. 100.7(b)(5).

D. FOOD, BEVERAGES AND INVITATIONS

An individual may spend up to $2,000 annually on behalf of all political committees of the same party for food, beverages and invitations in connection with party-related activities conducted in his/her home or in a church or community room (as specified in B and C, above). 100.7(b)(6).

E. TRAVEL

An individual may spend up to $2,000 annually for travel related to party activities. 100.7(b)(8).

F. LIVING EXPENSES

An individual may spend any amount for his/her normal living expenses incurred while engaging in volunteer activity. 100.7(b)(8).

G. VENDOR DISCOUNTS

A vendor, whether or not incorporated, may sell to a party committee, at cost, food and beverages to be used in connection with party-related activities, as long as the cumulative value of the discounts does not exceed $2,000 annually on behalf of all political committees of the same party. 100.7(b)(7).

VIII. FREE LEGAL AND ACCOUNTING SERVICES

Party political committees may accept, without limit, free legal and accounting services if the services do not directly further the election of a specific federal candidate and if the person paying for the services is the regular employer of the individual rendering them. Services provided in this way do not count as contributions, but the committee must report them. 100.7(b)(13). This exemption does not apply when a political committee uses contributions received to pay for legal and accounting services.

Alternatively, an individual may provide legal and accounting services on a voluntary basis, without compensation. As such, they are not reportable. (See VII A, "Personal Services," above.)

IX. KEEPING RECORDS AND REPORTING

Registered committee treasurers are responsible for keeping records and accounts, including copies of statements, reports and other pertinent records, for three years after a report or statement is filed. 102.9(a) and 104.14(b). In addition, a party organization that is not a political committee, but that makes contributions or expenditures to influence federal elections, must keep records of amounts received and expended with regard to federal elections. 102.5(b).

A. RECORDING CONTRIBUTIONS RECEIVED

Although the Act requires committees to keep records of contributions only, **all** receipts must be **reported**. Therefore, keeping records of all receipts will help the committee fulfill its reporting obligations.

1. Total Contributions

Records must show figures for total contributions received.

2. Identifying Contributions

a. Contributions Exceeding $50

Records must identify each contribution of more than $50 by amount, date received and by the donor's name and address.

b. Contributions Aggregating Over $200

Records must identify each contribution aggregating more than $200 per calendar year from the same person by amount, date received and by the donor's name and address **plus** the donor's occupation and the name of his/her employer. In the case of a person who has already contributed an aggregate of more than $200 per year, each of his or her subsequent contributions must be identified in the same way.

c. Contributions from Political Committees
Records must identify all contributions from political committees, **regardless of amount**, by amount, date received and by the name of the committee. 102.9(a).

3. Forwarding Contributions
A local party organization or campaign worker that collects contributions for a party committee must forward both the contribution and the required identifying records (listed above) to the recipient committee's treasurer within a specified period of time: for contributions of $50 or less — within 30 days; for contributions exceeding $50 — within 10 days. 102.8(b).

4. Identifying Transfers
Records must identify each transfer of funds received from another party organization, **regardless of amount**, by amount, date received and by the name and address of the transferring organization. 104.3(a)(2)(v).

RECORDING DISBURSEMENTS

1. Total Disbursements
All disbursements (except from a petty cash fund) must be drawn by check or similar draft from the campaign depository. 102.10 and 103.3(a). Records must show figures for total disbursements.

2. Petty Cash Disbursements
A written record of petty cash disbursements must be kept if a petty cash fund is maintained. Payments from petty cash to one person for any one purchase or transaction may not exceed $100. 102.11.

3. Identifying Disbursements

a. All Disbursements
Each disbursement must be identified by date and amount, name and address of payee and purpose (i.e., a brief description of why the disbursement was made, such as dinner expenses, salary, phone banks, etc.). 102.9(b) and 104.3(b)(3)(i).

b. Disbursements Exceeding $200
In addition, for each single disbursement that exceeds $200, the committee must also keep a receipt, invoice or canceled check. 102.9(b)(2).

c. Disbursements for Federal Candidates
If a disbursement is made for a federal candidate (that is, a contribution to a candidate or candidate committee), records must include not only the date, amount and purpose of the disbursement, but also the office sought by the candidate, including the state and Congressional district, if applicable. 102.9(b)(1)(iii).

d. Credit Card Transactions
For all credit card transactions, a monthly billing statement or customer receipt for each transaction is required as well as the canceled check used to pay the account. 102.9(b)(2)(ii).

e. Credit Union or Share Drafts
Carbon copies of share drafts or checks drawn on credit union accounts may be used as records provided the monthly account statement showing that the draft or check was paid by the credit union is also retained. 102.9(b)(2)(iii).

C. REPORTING
Each treasurer of a political committee must file periodic financial reports disclosing all the committee's receipts and disbursements. 104.1(a). If you believe your committee needs to register and report, contact the Office of Public Communications (see Part X) to obtain the required forms and information on where and when to file reports.

X. ASSISTANCE FROM THE FEC

A. ADDITIONAL MATERIALS AVAILABLE

1. *The Federal Election Campaign Act*
2. FEC *Regulations*
3. Registration Forms
4. Reporting Forms
5. Calendar of Reporting Dates
6. The FEC *Record*, a monthly newsletter
7. *The FEC and The Federal Campaign Finance Law*, an informational brochure for the general public
8. *Campaign Guide for Congressional Candidates and Committees*

B. CLARIFICATION OF THE LAW

1. General Assistance
Party committees may obtain general information from the FEC's Office of Public Communications. Phone the Commission in Washington, D.C. at 523-4068 or call toll free 800/424-9530. Phone calls from Alaska or Hawaii may be made collect to the Commission (202/523-4068).

2. Advisory Opinions
For more complicated questions relating to the application of the law to a specific factual situation, any person may request an advisory opinion in writing. Requests

for opinions and the opinions themselves are made public. A requesting person who in good faith acts in accordance with the advisory opinion will not be subject to any penalties with regard to the activity in question. 112.5(b).

C. PUBLIC RECORDS

The Public Records Office makes available for public inspection and copying both microfilm and paper copies of reports and statements filed by federal candidates and committees (1972-present).* A fee schedule for copying is available upon request.

Other documents available for public inspection in the Office of Public Records include: completed (closed) compliance cases, FEC finance reports and computer indexes and cross indexes to locate documents.

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*Anyone using such documents is reminded, however, of the Act's requirement that information copied from reports and statements "may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes," except that political committees may be solicited. 2 U.S.C. §438(a)(4).

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APPENDIX ON CONTRIBUTION LIMITS

CONTRIBUTION FROM:	TO CANDIDATE OR HIS/HER AUTHORIZED COMMITTEE	TO NATIONAL PARTY COMMITTEE[1] Per Calendar Year	TO ANY OTHER COMMITTEE Per Calendar Year	TOTAL CONTRIBUTIONS Per Calendar Year[2]
INDIVIDUAL	$1,000 Per Election[3]	$20,000	$5,000	$25,000
MULTICANDIDATE COMMITTEE[4]	$5,000 Per Election	$15,000	$5,000	No Limit
PARTY COMMITTEE	$1,000 or $5,000[5] Per Election	No Limit	$5,000	No Limit
REPUBLICAN OR DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE,[6] OR THE NATIONAL PARTY COMMITTEE, OR A COMBINATION OF BOTH	$17,500 to Senate candidate per calendar year in which candidate seeks election.	Not Applicable	Not Applicable	Not Applicable
ANY OTHER COMMITTEE OR GROUP[7]	$1,000 Per Election	$20,000	$5,000	No Limit

[1] For purposes of this limit, each of the following is considered a national party committee: a party's national committee, the Senate Campaign committees and the National Congressional committees, provided they are not authorized by any candidate.

[2] Calendar year extends from January 1 through December 31. Individual contributions made or earmarked to influence a specific election of a clearly identified candidate are counted as if made during the year in which the election is held.

[3] Each of the following elections is considered a separate election: primary election, general election, run-off election, special election, and a party caucus or convention which has authority to select the nominee.

[4] A multicandidate committee is any committee with more than 50 contributors which has been registered for at least six months and, with the exception of state party committees, has made contributions to five or more federal candidates.

[5] Limit depends on whether or not party committee is a multicandidate committee.

[6] Republican and Democratic Senatorial Campaign committees are subject to all other limits applicable to a multicandidate committee.

[7] Group includes an organization, partnership or group of persons.

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